

California Department of Food & Agriculture
William (Bill) J. Lyons, Jr., Secretary
Dairy Marketing Branch
1220 N Street, Sacramento, CA 95814
(916) 654-1456 / Fax (916) 654-0867



California Milk & Dairy Products MARKETING PROVISIONS

Fall 2001 Draft Edition

This guide was prepared by the
California Department of Food and Agriculture,
Dairy Marketing Branch, Enforcement Unit

Dairy Marketing Branch
1220 N Street ♦ Sacramento, CA 95814
Phone (916) 654-1456 ♦ Fax (916) 654-0867
Email Address: dairy@cdfa.ca.gov ♦ Website: www.cdfa.ca.gov/dairy

TABLE OF CONTENTS

	Page
Introduction	1
Glossary of Terms/Definitions	3
Price Schedules	6
Meeting Competition	10
Public Agency Prices	12
Slotting Allowance	14
Price Discrimination	15
Sales Below Cost	20
Solicitation, False Statements	25
Costs	26
Legal Actions & Penalties	29
APPENDIX	
Hypothetical Price Schedules	30
Price Exception Letter	37
Index of Contents	38

Introduction

The Department of Food and Agriculture (Department) promotes the intelligent production and orderly marketing and distribution of all milk and dairy products. For more than 50 years, California has been the number one ranking agricultural producer and exporter in the United States, growing more than half of the nation's fruits and vegetables. California is also the largest dairy producer and has some of the largest dairies in the country, averaging 665 cows per dairy. In the year 2000, California accounted for 19.2 percent of the milk produced in the United States and cash farm receipts from the marketing of milk and cream reached \$3.7 billion.

The Dairy Marketing Branch

The Dairy Marketing Branch (Branch) is responsible for enforcing the provisions of the California Food and Agricultural Code and related regulations concerning the marketing of milk and dairy products. These provisions were adopted to maintain an orderly and stable market for milk and dairy products by discouraging marketing tactics that may cause sudden market price fluctuations. The laws also deter the formation of monopolies in the wholesale and retail sectors of the dairy industry, which if left unmonitored, could lead to discriminatory practices and predatory pricing designed to force competitors out of business. Branch responsibilities include: encouraging sound production and marketing of dairy products by resolving public policy issues and providing key market information, establishing minimum milk farm prices and enforcement of statutes prohibiting unlawful marketing practices relating to milk and dairy products, and formulating a comprehensive plan of regulating the marketing of milk, ensuring availability to consumers of an adequate and continuous supply of pure, fresh, wholesome market milk. The Food and Agricultural Code and regulations, Pooling Plan, and Stabilization and Marketing Plan provisions apply equally to all manufacturers, distributors, producers, wholesale customers, brokers, or any representative of them.

Branch Enforcement Unit

The Branch Enforcement Unit is responsible for enforcing laws pertaining to the marketing and trade practices associated with distribution of milk and dairy products. The staff performs investigations to verify compliance with dairy industry laws and may exercise its authority to take enforcement actions.

The basis of the milk and dairy products marketing provisions discussed in this booklet is found in the California Food and Agricultural Code (Code), Division 21, Part 3, Chapter 1

(website: www.leginfo.ca.gov/calaw.html). These laws can also be viewed at the back of this booklet.

The regulations related to these provisions of the Code are contained in Title 3, Chapter 3, Subchapter 3 of the California Code of Regulations (Regulations) (website: www.calregs.com). A copy of the Barclays Official California Code of Regulations can be purchased by contacting The West Group at (800) 888-3600.

Licensing Requirements

Any person who regularly operates mobile vehicles on routes used predominately for the sales of dairy products to wholesale customers is required to be a licensed distributor. Distributors whose routes are used predominately for home delivery customers are not required to be licensed; however, if less than 51% of their business is to homes, then a license is required, *Code Section 61306*, and *Sections 62141 and 62142*.

Records

Any distributor, manufacturer or person who sells at wholesale is required to maintain and keep certain records. In addition to price schedules and terms and conditions, records must be kept of all milk received, processed and sold, the quantity sold, the price received and all costs of handling, processing, sale and delivery, *Code Section 61441*. The Secretary, or his/her representatives, shall have access anywhere records concerning milk and dairy products are kept, which includes any place where dairy products are sold. The records may be inspected and copied at any place in the State, *Code Section 61442*.

How To Use This Booklet

The most common unlawful practices are categorized with related subtopics following. For example, violations related to selling dairy products below cost are located in the "Sales Below Cost" section. References to the codes and regulations are noted in *italics* and can be found at the websites previously mentioned.

Confidentiality

Information obtained pursuant to these provisions is confidential and shall not be divulged, except if necessary for the determination of any court proceeding or hearing before the Secretary or his/her representatives, *Code Section 61443*.

Glossary of Terms/Definitions

The definitions listed below are guidelines, for more specific definitions refer to the Food and Agricultural Code or visit our website at www.cdfa.ca.gov/dairy.

Brokers: Persons or firms who represent others in buying and selling milk and dairy products are subject to the same unlawful practices provisions as are distributors, manufacturers and wholesale customers. Examples of broker marketing practices subject to the Code and regulations include: 1) A broker may not sell dairy products below cost, whether or not the transaction is on behalf of another party; and 2) A broker can be considered a joint participant to an unlawful practice. For example, an unlawful practice may involve a broker purchasing dairy products below cost from a dairy supplier. If a broker is engaged in selling a large lot of butter, the prices at which he sells the lot must be in compliance with the "special price" and "discrimination" provisions. The broker may not offer a special price or service that is not made available to other wholesale customers or consumers purchasing like quantity under like terms and conditions.

Chain Store: A chain store is considered two or more stores owned by the same person or corporation. (An example of chain stores would be Safeway, Ralph's, and Albertsons.

Classes of Milk:

Class 1 – Milk supplied to a consumer as a fluid product

Class 2 – Milk used for heavy cream, cottage cheese, yogurt, and sterilized milk products

Class 3 – Milk used in frozen dairy products

Class 4a – Milk used in the manufacture of butter and dry milk

Class 4b – Milk used in the manufacture of hard cheese

Code: Food and Agricultural Code

Cooperative: A nonprofit association of producers which accounts to producer-members on a patronage basis. The cooperative can be a distributor, handler, or producer.

Dairy Product: Any product classified as Class 1, Class 2, Class 3, Class 4a, or Class 4b and any filled product or any imitation milk product in which the use of market milk or any component of market milk is required.

Distributor: 1) Any handler, broker, agent, nonprofit cooperative, delivery route operator that sells market milk, market cream, or dairy products to wholesale customers, or 2) wholesale customers who actively process, manufacture, or package milk, cream, or dairy

products. A distributor can also be regarded as a “handler” that includes any person who, either directly or indirectly, receives, purchases or otherwise acquires ownership, possession or control of market milk in unprocessed or bulk form from a producer, a producer-handler, or another handler for the purpose of manufacture, processing, sale, or other handling.

Food Service Establishment: An establishment, such as a restaurant, where dairy products are sold to consumers for consumption on the premises.

Handler:

- ◆ A person (other than a cooperative association) who operates one or more pool plants or operates any other plant from which Class 1 milk is disposed of directly or indirectly during the month in the marketing area.
- ◆ A cooperative association that has authority from its individual producer members to market their milk and receive payment and which operates one or more pool plants.
- ◆ A cooperative association acting as a marketing agent for producer milk which it markets and receives payment therefor under authority of contracts or agreements with its individual members.
- ◆ A person who operates a milk plant located in the marketing area and receives market milk from one or more dairy ranches.

Joint Participant: A party engaged in a willful unlawful practice with another party. The parties are knowledgeable of marketing provisions that regulate the marketing of milk and dairy products.

Manufacturer: Any person or firm that is engaged in the business of manufacturing any dairy product. A manufacturer can also be considered a distributor.

Manufacturing Milk (Grade B): Milk produced and processed with sanitary regulations prescribed, inspected, and approved by public health authorities for milk to be used for manufactured products only.

Market Milk (Grade A): Milk produced under the strictest sanitary regulations prescribed, inspected, and approved by public health authorities. In most markets, milk used in any products intended for consumption in fluid form must meet this inspection standard.

Milk: Bulk whole milk, bulk lowfat milk, bulk skim milk, bulk condensed skim, and bulk cream that have not had nondairy ingredients added. Section 61302 defines bulk milk or bulk cream as milk or cream that has not been pasteurized or packaged and is delivered in

tanks, cans, or other bulk containers. Bulk skim milk or bulk cream that has not been preheated or pasteurized more than once is not defined as pasteurized.

Notice Of Violation (NOV): A Notice of Violation (NOV) may be issued when a violation is confirmed. The NOV includes a description of the violation and a date to provide documentation of compliance (if applicable). A permanent NOV record is maintained, and the Branch may institute a civil action against a firm who has repeat NOVs on file.

Person: Any individual, firm, corporation, partnership, association, nonprofit cooperative association, or any other business organization.

Private Schools: A private school can be either: 1) a non-public school that offers instruction in or maintains grades kindergarten through high school (k-12) and provides nonprofit food service or lunch programs, or 2) a non-public post-secondary educational institution that offers the same academic degrees as public universities and colleges and provides a non-profit food service program.

Producer/Handler: Any person that is both a producer selling or delivering bulk market milk of his or her own production and is a handler purchasing, acquiring, or receiving market milk, pasteurizing or packaging market milk, or selling or delivering market milk.

Public Agency: Any city, county, district, or other local authority or public body of or within this State (*Section 20009*). An example of a public agency is a public school, county hospital, or city jail.

Regulation: California Code of Regulations, Title 3, Chapter 3, Subchapter 3, Milk Marketing.

Secretary: The Secretary of the California Department of Food and Agriculture or any employee duly assigned or delegated to perform the functions required pursuant to the Pooling Plan, Stabilization and Marketing Plan, or Code.

Stabilization and Marketing Plan: Any plan formulated by the Secretary to establish prices paid to producers for any class of market milk. (See Appendix for an example of price letter derived from information gathered using the Stabilization and Marketing Plans).

Wholesale Customer: Any person or firm, other than a distributor, that buys packaged milk, cream, or any dairy product for resale to consumers or to other wholesale customers.

Price Schedules

The written price schedule is an essential part of the everyday operations of people who sell dairy products. It is equally essential to the buyer. The written price schedule conveys what prices will be charged for different types of delivery and different purchase volumes. It also contains various terms and conditions which qualify the customer for the prices set forth in the price schedule.

By following the information and guidelines contained herein, the possibility of vague, overlapping, misleading or incomplete price schedules may be avoided.

Code Section 61441 states in pertinent part: "Every distributor, person who sells at wholesale... shall maintain and keep, for a period of three years... "(b) ... written price schedules" This provision means that the record keeping requirements of the Code, and the related regulations discussed below, apply to distributors and wholesale customers selling to a wholesale customer.

Section 1831(a) of the Regulations provides in pertinent part: "Every distributor shall maintain... written price schedules which set forth the prices at which each distributor is selling, offering, or agreeing to sell to distributors or wholesale customers, any dairy product ... and any product sold in conjunction with any dairy product ... " *Subparagraph (b)* of this same Regulation requires that written price schedules clearly state the effective date of each schedule and the geographic area to which each written price schedule applies. The importance of designating the geographic area for the price schedule is often overlooked. The geographic area applicable to each written price schedule must be clearly designated to avoid the problems created by overlapping prices, and to enable a reasonable person to determine the validity of "price meeting" situations. Finally, geographic areas must be designated on the written price schedule so proper delivery cost determinations may be made.

Delivery cost factors shall be determined and applied on the basis of a single delivery at a single delivery location. Price variations may reflect delivery costs associated with the methods listed in *Regulation Section 1942 (a)(1)*. Those methods of delivery include both on premise (i.e., restaurant) and off premise (i.e., store, distributor) and are:

- ◆ At the processor's dock or non-processing depot
- ◆ At the customer's dock

- ◆ By limited service delivery
- ◆ By full service delivery

Weekly or monthly accumulations of delivered product, or combined dock pick up product, do not constitute justification for variable pricing. Thus, further price variations, other than those stated in *Regulation Section 1942 (a)(3), Classes of Trade* are not permissible.

Regulation Section 1942 (a)(3) provides authority for a distributor's price schedule to vary for classes of customer or trade. Those classes of customers or trade include: (1) retail stores; (2) food service establishments; (3) public agencies; and (4) private schools.

Price schedules must also reflect any terms and conditions of purchase which accompany a particular price schedule (*Regulation Section 1940*). *Regulation Section 1942 (a)(2)* provides that the terms and conditions of a written price schedule may justify possible price variations. The terms and conditions set forth the rules under which the distributor and customer must perform for the wholesale customer to receive certain prices. Examples of terms and conditions affecting net prices would be: 48-hour preorder, prompt pay, delivery invoice not extended by driver, and delivery at hours specified by the dairy.

At all times, proper documentation must be maintained by the seller to substantiate all prices at which the products are sold, including any price variations.

Except for meeting a lawful competitive price, any variation from a written price schedule is a violation of *Code Section 61382*, discrimination.

Variations from A Price Schedule's Terms and Conditions

Unlawful practices have been observed when variations from the terms and conditions of a dairy's price schedules are permitted. To illustrate how some of those practices occur, a set of hypothetical terms and conditions is shown below. While the precise terms and conditions contained in the list below are hypothetical, similar provisions are used in the dairy industry.

EZ DAIRY TERMS AND CONDITIONS Nos. 1, 2, and 3

1. All products must be pre -ordered at least 24 hours in advance.
2. Milk and by-products are to be delivered at the same time.
3. Products are to be delivered to one point only.

The first three items are similar to those contained in the terms and conditions for HIP Dairies and Competitor Dairy (see Appendix) except that products must be pre -ordered at least 24 hours in advance.

EZ DAIRY TERMS AND CONDITIONS NOS. 4 AND 5

4. \$25 delivery charge for regularly scheduled deliveries.
5. \$45 delivery charge for special non-scheduled deliveries.

EZ Dairy has a \$25 delivery charge for regularly scheduled deliveries. If they do not bill certain wholesale customers for that delivery charge, an unlawful practice has occurred; that is, a special price has been extended to one or more wholesale customers.

If for some reason EZ Dairy is unable to deliver all of the product which the buyer has ordered, a return delivery need not carry a delivery charge.

If on the other hand, the wholesale customer requests an extra delivery, term 5 requires the customer to pay a \$45 delivery charge for such special non-scheduled deliveries. Failure by EZ Dairy to properly bill for delivery charges or to collect the amount owed would result in the extension of a special price to wholesale customers.

EZ DAIRY TERM AND CONDITION NO. 6

6. Minimum dollar volume for all regular deliveries is \$125.

Term 6 requires that all regular deliveries be for a minimum dollar volume of \$125. If EZ Dairy's wholesale customer is not purchasing at least this amount, the customer is not meeting all the terms and conditions and is not qualified for the prices contained on this price schedule. If the Dairy extends prices from this price schedule to such a wholesale customer, another unlawful practice has occurred.

EZ DAIRY TERM AND CONDITION NO. 7

7. Only damaged products and "leakers" may be returned for credit.

Term 7 allows credits for the return of damaged products and leakers. An unlawful variation from this type of provision occurs if a dairy gives credit for other than damaged product or leakers. For example, it would be an unlawful practice if a dairy gives credit for "out-of-code" product because that is not a listed term or condition.

It is not unlawful for the dairy to give credit for the return of "out-of-code" products. This specific term, however, must be listed as part of the dairy's terms and conditions.

EZ TERM AND CONDITION NO. 8

8. For prompt payments within 7 days of the invoice date deduct 1%.

Term 8 is commonly referred to as a "prompt payment provision." The wholesale customer who makes payment within 7 days of the invoice date is entitled to deduct 1% of the amount charged on the invoice.

If a dairy offers a prompt payment provision to some of its wholesale customers rather than all similar customers, the customers who receive the benefit of the prompt payment provision have received a special price.

The dairy must offer the same prompt payment provision to all similar customers. If a dairy offers a larger percentage in its prompt payment provision to selected wholesale customers even though they purchase under the same terms and conditions, the customers who receive the larger percentage have an economic advantage over other similar customers and an unlawful practice has occurred.

EZ DAIRY TERMS AND CONDITIONS NOS. 9 AND 10

9. If payment is made within 21 days of invoice date, no interest will be charged.

10. For late payments, interest charges of ½% on the late balance per month will be
calculated from the invoice date.

Terms 9 and 10 relate to the payment of interest charges. If a wholesale customer of EZ Dairy does not pay for a delivery within 21 days of the invoice, the customer is required to pay interest charges as provided in Term 10.

If these charges are not billed and collected, the dairy distributor will have extended a special price to the wholesale customer and will be in violation of California's milk marketing provisions.

Services

Occasionally, a dairy distributor will accommodate requests to provide services beyond those the distributor routinely offers. For example, the wholesale customer may ask that the distributor agree to rotate stock, or assist in taking inventory at the customer's business. The wholesale customer might further ask that the distributor maintain customer-owned refrigeration equipment or load and unload milk dispensers or service vending machines.

Other requests might be that the distributor provide personnel for free demonstrations to promote product sales or for window signs to advertise sales on certain products. In addition, a request might be made to forgo special non-scheduled delivery charges, and that the distributor guarantee that the wholesale customer will receive credit for the return of any product.

If the dairy distributor agrees to any of these requests and these services are not made available to all similar wholesale customers, the distributor is in violation of *Code Section 61382*, Discrimination. The wholesale customer would be in violation of *Code Section 61391*, Joint Participation.

As discussed in connection with EZ Dairy's Terms and Conditions 5 and 7, if these provisions are available to all similar wholesale customers, no violation of law has occurred. However, if they are not available to all similar customers, both the distributor and the wholesale customer are in violation of California's milk marketing provisions. (See Variations from A Price Schedule's Terms and Conditions)

Discount Price Schedule

Another type of price schedule is one which has a single set of prices for each item, together with a discount schedule that is based upon the total dollar volume purchased on a single delivery. This type of price schedule is called a "discount price

schedule." A discount price schedule may provide that for total purchases on a single delivery of \$0 to \$250, the wholesale customer will be billed at the net price. For deliveries where the volume purchased is \$251 to \$400, the wholesale customer will receive a 2½ % discount from the net price total charged on the invoice.

Public Agency Prices

Specific guidelines are set forth for public agency and private school price schedules *in Section 1942(b)* of the Regulations. A public agency price schedule is a wholesale price schedule and it must be on file at the dairy distributor's office. The prices on this schedule must reflect those being offered to public agency accounts.

Public agency prices may vary from the distributor's regular written wholesale price schedules. However, public agency prices are still subject to the discrimination, giving something of value, and below cost provisions of the Code.

A distributor may, at a particular public agency location, meet the offer of a competitor's lawful price schedule. If a competitor's price schedule is met, it must be met in its *entirety*, which includes all prices and terms and conditions.

Private Schools

Private schools also qualify within the scope of public agency pricing, *Regulation Sections 1942(a)(3) and 1942(b)(4)*, and are subject to the same unlawful practices provisions of the Code. (See definition of private schools in glossary of terms)

If a distributor maintains public agency prices, he may elect to offer such prices to private schools subject to the same quantity and service conditions as are applicable to the distributor's public agency prices. If the distributor offers public agency prices to private schools, these prices shall be applicable to all private schools serviced by the distributor.

It is not mandatory that private schools receive public agency prices. The distributor may charge private schools from his regular wholesale price schedule. If that is the case, the regular wholesale prices shall be applicable to all private schools serviced by the distributor.

Public Agency Bid Request

A bid request for prices and terms and conditions must be adequately defined to enable a distributor to offer a lawful response. The request should completely define the public agency's needs, i.e., duration of contract, number of facilities to be served, which days of the week service is required, type of service required (full or limited service), etc. The public agency may request specific terms and conditions as long as those requests do

not conflict with the Code or Regulations. For example a public agency should not specify that a response contain "fixed" prices during the contract period. If fixed prices have been requested and given, and the raw product cost increases (or some other uncontrollable cost increases), then the result could be a sale at less than cost. If this happened, the dairy supplier would be in violation of *Code Section 61384* (sales at less than cost) and the public agency who insisted upon fixed prices would be a joint participant in the same violation of the Code, *Section 61391*.

To prevent this type of situation, an "escalator clause" should be included in the bidding process and the contract. This would allow for price variations beyond the dairy's control.

To assure itself that public agency prices are being offered, the public agency may request the dairy supplier to submit a copy of the appropriate written public agency price schedule with the bid response.

The contract between a public agency and dairy supplier may be for a fixed period of time not to exceed one year. The contract could be considered lawful if it did not conflict with any provisions of prevailing law.

Public Agency Bid Response

A bid response from the dairy supplier to a public agency is a formal quotation of prices with terms and conditions. While the supplier will want to comply with all of the requests of the public agency, it must abide by California's milk and dairy products marketing provisions.

Wholesale Customer Bid Requests-Contracts

Wholesale customer bid requests should not be confused with public agency bid requests. The distinction being a wholesale customer bid request is simply a request for the distributor to quote his regular wholesale prices and terms and conditions.

The dairy product prices must follow the distributor's established wholesale price schedule and terms and conditions. Prices must be based on a single delivery to a single delivery location. Deviations from price or service, as based on the price schedule's terms and conditions, may not be allowed and specific requests of service that are not listed as a term or condition may not be offered or an unlawful practice has occurred.

Slotting Allowance

The term "slotting allowance" is familiar to both the retail food industry and the dairy industry. This term is used to describe the direct payment of money, or some other thing of value, from a manufacturer to a buyer to ensure the placement of a product on the shelf of the buyer's warehouse or retail store.

Other terms have become synonymous with the term slotting allowance. Some of these terms are stocking allowance, distribution allowance, administrative allowance, introductory allowance and shelf allowance.

An unlawful practice occurs when something of value is bestowed on a customer without adequate compensation being returned. Such allowances violate *Code Section 61382* (discrimination), and *Code Sections 61383* (giving something) and *61384* (sales at less than cost).

For example, if a seller pays a buyer \$5,000 to have a new product placed on the retail store shelf, this would be considered giving something of value or discrimination, and violate the Code provisions mentioned above.

There are other similar marketing practices that also violate *Code Section 61383*. Under normal circumstances, if a manufacturer is required to pay a "presentation fee" to present a product to a prospective buyer, this would be giving something of value and a violation of the slotting allowance provision. If a manufacturer participates in a customer's advertising, the manufacturer may only contribute the legitimate cost of its actual participation in the advertising.

As a general guideline for determining whether a marketing practice will violate the slotting allowance provision, the verifiable relationship between what is given to the customer and what is received in return must be examined. For example, if a seller pays a buyer \$5,000 to participate in a newspaper advertisement and the actual cost of the seller's space is \$1,000, then a \$4,000 gift would have been made, which is a violation.

Price Discrimination

Code Section 61382 provides in pertinent part:

"Discrimination in price between distributors or between wholesale customers, or between consumers that purchase milk, cream, or any dairy product of like grade and quality under like conditions of service if the effect of that discrimination may be substantially to lessen competition or to injure or destroy or prevent competition with the person that either grants or knowingly receives the benefit of the discrimination is an unlawful practice."

Code Section 61383 provides in pertinent part:

"The sale or offer to sell or giving of any article in any transaction which involves the sale or disposal of milk, cream, or any dairy product, for less than the cost of the article, as "cost" is defined in Section 61384, to secure or retain the milk, cream, or dairy products business of any wholesale customer or any person that buys as a consumer is an unlawful practice."

It should be recognized that a violation of *Code Section 61383*, as with the violation of most of the other unlawful practices provisions discussed in this booklet, will result in the extension of an economic advantage, which is in violation of *Code Section 61382* (i.e., discrimination in price).

Volume Purchase Provisions

A bid request sometimes contains a provision that if the wholesale customer's dairy product purchases exceed a certain dollar volume during a specified period, the customer will receive a percentage rebate based upon all products purchased.

To illustrate this practice, assume the wholesale customer who owns 25 stores has included such a proposal in the bid request. Each of the 25 stores purchases approximately \$425 of milk and dairy products on individual deliveries. Further assume the bid request asks for a 3% rebate on all product purchased in a six month period if the total volume purchased by all 25 stores exceeds \$500,000. Assuming at least 2 deliveries a week at each location, the total volume purchased during a six-month period would exceed \$500,000, and the wholesale customer would expect a rebate of over \$15,000.

This arrangement, which extends a rebate to a wholesale customer based on the total volume of product purchased on more than one delivery at more than one location, would result in price discrimination to the customer and would be a violation of California's milk marketing provisions.

A variation on this type of request is a suggestion that the dairy distributor agree that if the total dollar volume of the wholesale customer's purchases of milk and dairy products increases by a certain amount during a specified period, the dairy will lower the prices being charged to the customer for future purchases.

Either of these arrangements would result in an unlawful practice by the dairy distributor. The wholesale customer's request for such provisions constitute a violation of *Code Section 61391*, solicitation of an unlawful practice.

Firm Prices or Prior Notification of Changes

Occasionally, a wholesale customer's request for price quotations will specify a dairy distributor to provide firm prices for a certain period of time. Such a request could be lawful if the dairy distributor's appropriate written price schedule did not change during the specified period of time. If the prices from which this customer is being charged change during the specified period, and the dairy distributor continues to bill this customer at the old prices, the distributor and the wholesale customer would be engaged in unlawful practices. The result would be price discrimination by the distributor, *Code Section 61382*. The wholesale customer would have jointly participated in an unlawful practice, *Code Section 61391*. Further, if due to increased costs some of the old prices resulted in sales of dairy products below cost, a violation of *Code Section 61384* has occurred.

Another similar request is that the dairy distributor agrees to provide a specific amount of notice prior to price changes. For example, the dairy distributor is required to agree that the wholesale customer must be given 90 days notice prior to any price changes. If the distributor's appropriate price schedule changes, and the wholesale customer continues to receive prices not available to other similar wholesale customers for a 90-day period, then both the distributor and the wholesale customer would be participating in unlawful practices, as discussed above.

Price Variations on Individual Items

A practice which results in discrimination occurs when a wholesale customer is designated by the dairy to receive a price on one or more selected dairy products which differs from the appropriate price schedule.

To illustrate this practice, assume an audit of Competitor Dairy that reveals that one of the wholesale customers purchases enough dairy products per delivery to qualify for the \$350 bracket. One of the products this wholesale customer purchases is half-gallon containers of homogenized milk. The \$350 bracket price is \$1.11 per half-gallon container. The audit reveals that this customer is not being billed \$1.11 per unit for that product, but is being billed \$1.07 per half-gallon container. Thus, this wholesale customer is receiving a lower price for this particular item than the price listed in the bracket for which the customer qualifies.

Catering: Price variations are permissible to include classes of customer or trade. A catering business would qualify as a food service establishment, one of the classes of customer or trade. An unlawful practice would occur if a dairy supplier extended to a caterer different prices than those listed on his food service establishment price schedule.

Combining Delivery Invoices

Another example of a practice which violates California's milk marketing provisions occurs when the volume of product purchased on different deliveries is combined by the dairy to represent a single delivery of product to the wholesale customer.

To illustrate this practice, assume an audit of HIP Dairies. The investigator notices that there is an unusual pattern of purchases on the part of the wholesale customer. During the week of February 5, 2001, the following pattern is seen:

Weekly Statement

Deliveries - Week of February 5, 2001

<u>Date</u>	<u>Amount</u>
2/5	\$ 700.00

2/8

\$1,500.00

The disparity between the volume of product purchased on February 6 and that purchased on February 8 causes the investigator to look more closely at the records concerning this wholesale customer.

Those records reveal that what actually occurred is the following:

<u>Actual Deliveries</u>	
<u>Date</u>	<u>Amount</u>
2/5	\$700.00
2/6	\$700.00
2/8	\$800.00

The audit reveals that the delivery invoices for the February 6 and February 8 deliveries were combined. The result of the combination of the invoices appears to qualify the wholesale customer for \$950 bracket prices for those purchases rather than the \$600 bracket prices for which the customer is actually qualified. This unlawful practice creates lower net prices for the products purchased on February 6 and 8 deliveries, and would be considered price discrimination to the wholesale customer.

The above materials describe the granting of "discounts" either through the use of bracket price schedules or discount price schedules, with particular emphasis on unlawful practices which result in discrimination by the granting of unearned discounts. The Dairy Marketing Branch considers a "discount" to be a credit that is reflected on a statement or an invoice.

The Guaranteed or Locked-In Price Bracket

An example of an unlawful practice is the extension of a "guaranteed" or "locked-in" price bracket. In such cases the wholesale customer is guaranteed that regardless of the amount of product ordered for an individual delivery, the customer will be billed as though the customer qualified for a particular predetermined bracket.

An example of this type of violation can be shown using HIP Dairies' limited service price schedule. (See Appendix) For the purpose of this example assume the wholesale customer has been promised by HIP Dairies that regardless of the amount of product purchased the customer will be billed according to \$600 bracket prices.

An audit reveals that while this wholesale customer often purchases enough product to qualify for the \$600 bracket prices, two or three times a month the customer purchases only enough product on a single delivery to qualify for prices in the \$350 bracket.

Our investigator's notes concerning one of HIP Dairies' deliveries to HEY Market shows the following:

<u>HEY MARKET</u>			
Product/ Quantity	Extended Base Price	Net Price \$600 Bracket	Net Price \$350 Bracket
Gal. Homo 120	\$247.20	\$204.00	\$216.00
1/2 Gal. Homo 100	120.00	105.00	110.00

Qt. Homo. 60	42.00	38.40	39.60
1/2 Pt. Yogurt 24	<u>12.00</u>	<u>9.84</u>	<u>10.32</u>
Total	\$ 421.20	\$357.24	\$375.92
	Net at \$350 Bracket Prices		\$375.92
	Net at \$600 Bracket Prices		<u>357.24</u>
		Difference	\$ 18.68

On this particular delivery, the wholesale customer's purchases, when extended at HIP Dairies' wholesale base prices, total \$421.20. While the customer has qualified for the net prices of the \$350 bracket, our audit shows that HEY Market was billed at the \$600 bracket's net prices. If HIP Dairies has agreed to bill the customer based upon prices in the \$600 bracket regardless of the amount of product purchased on a particular delivery, then in those instances where the customer did not purchase enough product to qualify for those prices, the customer has received a special price. Such a practice gives this customer an economic advantage, which is not available to other wholesale customers, and an unlawful practice has occurred.

Rebates

A rebate is the payment by the dairy distributor of a sum of money, or its equivalent, to the wholesale customer. Unlawful practices occur when a rebate is improperly granted to a wholesale customer. Some types of unlawful rebates found during enforcement audits include:

1. The extension of a special price by granting a rebate of a specified percentage of the total amount charged for milk and dairy product purchases over an agreed upon period.

For example: Assume a dairy distributor offers wholesale customers a rebate of 2% of the amount paid for all products purchased during an 8-week period. The investigator finds that one of these customers purchased \$5,400 of milk and dairy products during a particular 8-week period, and that this customer then received a check for \$108 from the distributor.

2. The dairy distributor promises some wholesale customers to rebate a specified sum for each unit of a particular product purchased by the customer.

For example: A wholesale customer is promised a rebate of 10 cents for each one-gallon container of milk purchased. This customer purchases 450 one-gallon containers of milk and receives a check from the distributor for \$45.

3. Some wholesale customers are promised a refund of all monies paid for delivery charges. (See EZ Dairy Terms And Conditions, Numbers 4 and 5)
4. Wholesale customers are promised a refund for all payments made for rental of cabinets and other equipment from the distributor. (see Gifts Section)

Chain Pricing or Statewide Single Unit Pricing

Almost all dairy distributors maintain written price schedules in which prices are predicated on serving a specific marketing area. The volume of product purchased must be based on a single delivery at a single delivery location. This applies even if the distributor delivers to stores that are part of a chain.

Sometimes chain stores will request and expect to receive statewide single unit pricing or "chain" pricing on milk and dairy products. Given the differences in serving individual geographic areas, variances in the

amount of dairy products delivered, and normal differences in plant costs, it is unlikely that a dairy distributor operating in California could lawfully grant a request for such pricing.

To illustrate the problems a request for chain or statewide unit pricing presents to the dairy distributor, assume that a distributor receives such a request from a wholesale customer who has 100 stores in California. Fifty of the customer's stores are located in the Los Angeles area and fifty stores are located in the San Francisco Bay area.

Further assume that the dairy distributor has a processing plant in Los Angeles and another in San Francisco. Assume the distributor maintains a limited service type price schedule for the Los Angeles area and another similar price schedule for the San Francisco area. Even if both limited service price schedules contain the same terms and conditions and the same price brackets, they probably will have different prices because the costs of operation in the two areas may differ.

If this dairy distributor grants the wholesale customer's request for chain or statewide uniform pricing, unless the distributor extends the same prices to all other similar wholesale customers statewide, the distributor would then be discriminating between customers. The wholesale customer would also be in violation of California's milk marketing provisions for soliciting and receiving a special price.

Two-area pricing could raise the same problems and violation for the same reasons.

Sales Below Cost

Sales Below Cost - By A Manufacturer/Distributor

A manufacturer (processor) and distributor who is not a processor are prohibited from selling dairy products below cost, per *Code Section 61384*. When determining compliance with sales below cost provisions, the costs associated with manufacturers and distributors differ from those associated with wholesale customers. Manufacturer and distributor costs may include raw product, manufacturing, processing, handling, sale, delivery and overhead costs, see Regulation Section 1950. Promotional discounts, advertising allowances, redemption devices, rebates, etc., are types of costs that must be factored in if applicable. Cost as applied to wholesale customers means invoice or replacement cost, whichever is lower, plus the cost of doing business of the wholesale customer (see illustration below).

Sales Below Cost - Nondairy Item

Regulation Section 1941(e) prohibits the sale of nondairy items below cost, if sold in conjunction with a dairy product. Examples of nondairy items include orange juice, bottled water, toppings, paper products, etc.

Sales Below Cost - By A Wholesale Customer

The Dairy Marketing Branch calculates the customer's cost of doing business by determining total sales income and all operating expenses. Total operating expense is divided by the total sales income, providing the wholesale customer's cost of doing business expressed as a percentage.

For example, HEY Market's profit and loss statement for the period of January 1, 2001 to December 31, 2001, indicates total sales income of \$1,000,000 and total operating expenses of \$150,000. The total operating expenses of \$150,000 divided by the total sales income of \$1,000,000 equals the cost of doing business of HEY Market, which is 15 percent.

HEY Market's replacement cost for a gallon of homogenized milk is \$1.60. To arrive at this market's minimum lawful out-of-store price, the grand mark-up method is used. The grand mark-up method applies the cost of doing business on the sales price, not the replacement cost of a dairy product. The following calculation illustrates this method:

$$\frac{\text{REPLACEMENT COST}}{100\% \text{ MINUS COST OF DOING BUSINESS}} = \text{MINIMUM LAWFUL OUT-OF-STORE PRICE}$$
$$\frac{\$1.60}{(100\% - 15\%)} = \frac{\$1.60}{.85} = \$1.88 \text{ MINIMUM LAWFUL OUT-OF-STORE PRICE}$$

So, HEY Market's \$1.60 cost for a gallon of homogenized milk divided by 100 per cent, less HEY Market's 15 per cent cost of doing business equates to \$1.60 divided by .85 which equals \$1.88. This is HEY Market's minimum lawful out-of-store price.

Corporate General and Administrative In-Store Overhead

In determining compliance with "below cost" provisions of the Code and regulations, one factor to consider is corporate overhead costs. This applies to stores that are part of a corporation such as Longs or Vons. At times, the Department requires these types of stores to provide cost justification

for their milk and dairy product prices. In doing so, it is necessary to factor in corporate operating expenses related to its oversight of the operation of the individual store in question.

Fee Accounts

A "fee account," or a "contract hauler" account, is a wholesale customer of a processing dairy served by an independent distributor for a delivery fee. The payment for serving the fee account might be a certain percentage of the total dollar amount of the invoice or a contract haul rate of so many cents per gallon delivered. The fee account must be billed from the appropriate processing dairy price schedule. The dairy should do the billing of the fee customer and carry the account receivables. If the customer is unable to pay their bill, the dairy must assume the loss.

Audits of processing dairies that maintain fee accounts have revealed one common unlawful practice. The dairy, in billing a fee account at a relatively low price and extending a high delivery fee percent or haul rate, may find it is selling at less than cost to service that fee account.

It is the responsibility of the dairy to periodically analyze its costs relative to its fee accounts and ensure that no sales at less than cost are occurring.

Gifts

Unlawful practices occur when a dairy distributor, manufacturer, or retailer gives anything of value to wholesale customers without receiving adequate compensation in return. The giving of any article in any transaction which involves the sale or disposal of milk, cream, or any dairy product to secure or retain the business of any customer or consumer violates *Code Section 61383*.

Gifts sometimes take the form of a free first delivery of product. A similar gift involves the delivery of the first month's milk and dairy products without charge. Regardless of how free deliveries occur, such transactions constitute a gift (*Code Section 61383*), price discrimination (*Code Section 61382*), and also the sale of dairy products below cost, which is a violation of *Code Section 61384*.

Another type of gift involves the distributor giving a wholesale customer one or more pieces of equipment. Examples include ice cream cabinets, refrigerator boxes or milk dispensers.

Equipment gifts have been provided in a number of ways including the following:

1. An outright gift of the equipment;
2. A lease of equipment, but rent free;
3. A lease agreement for the equipment where the rent charged is collected and rebated back to the wholesale customer; and
4. A lease agreement for the equipment where the rent charged and collected is below the fair market value for rental of that equipment.

It is incumbent upon the distributor to establish rental rates for refrigeration equipment.

When there is doubt as to what the rental charge should be, the dairy distributor may contact the manufacturer or manufacturer's representative of the particular piece of equipment and ask what their rental charge would be. This should be a good guide for a fair market value rental.

Money loans made by a distributor to a wholesale customer may be proper if the distributor charges a fair market rate of interest on the amount loaned and the conditions under which the loan was made are appropriate and fulfilled. If money loans are made without appropriate loan provisions or the terms of the loan are not met, the entire loan or some aspect of it could result in a gift from the distributor to the wholesale customer.

Promotions

Advertising and promotions are an integral part of marketing most products, and are used by both dairy manufacturers and wholesale customers (retailers). All dairy products may be promoted through the use of redemption devices (coupons, store cards, premiums, certificates, etc.). All costs of promotions must be borne by the person issuing or redeeming the coupons or other redemption devices. Promotions shall otherwise comply with all of the requirements of Chapter 1 of the Code. Among other things, this means that a promotional item shall not be sold below cost. In the case of coupons and other redemption devices, all associated costs, including but not limited to: the face value of the coupon, advertising, printing, redemption, etc., *must not cause the dairy product to be sold below cost*.

For example, if a retail store wishes to offer a 15-cent coupon to promote the purchase of an eight ounce cup of yogurt for 65 cents, the store must consider all of the costs involved in such a promotion.

In this example, the retail store finds it has the following costs to consider:

1. The cup of yogurt costs 35 cents;
2. The coupon is valued at 15 cents;
3. The store's promotional expenses (advertising, printing and redemption), etc. - costs 2 cents per unit;
4. The store's cost of doing business is 20 percent, or 9 cents per unit.

The cost of the cup of yogurt 35 cents - plus all promotional expenses (including the coupon) - which total 17 cents - plus the store's cost of doing business 9 cents - all add up to 61 cents. After all expenses, the retail store would make a 4-cent profit per unit. This example is a lawful promotion.

Sweepstakes

Sweepstakes and drawings are permitted as a promotional tool for marketing dairy products; however, they shall otherwise comply with the requirements of *Chapter 1* of the Food and Agricultural Code, including not causing dairy products to be sold below cost. Entities conducting sweepstakes must keep records for purposes of determining compliance with sales below cost provisions of the Code. These records should include the total cost of prizes awarded in the sweepstakes, and the advertising, promotional and administrative costs involved. Should it be necessary to determine whether the sweepstakes complied with the sales below cost requirement, these costs shall be prorated among all applicable products sold within the state during the term of the sweepstakes or drawing.

Manufacturer and Retail Store Coupons

All costs incurred in the issuance of coupons, premiums or certificates in connection with retail sales of dairy products must be borne by the entity issuing such devices. For coupons issued by a manufacturer, the wholesale price of the couponed dairy product must be equal to, or exceed all manufacturing costs incurred, *Regulation Section 61384(b)(1)*, otherwise a violation of sales below

cost would occur. For coupons issued by a retail store, the retail price of the dairy product must be equal to or exceed the invoice price or replacement cost of the product, whichever is lower, plus the "cost of doing business" for that particular retailer, *Regulation Section 61384(b)(2)*.

Nondairy Manufacturer Coupon

Frequently, nondairy products and dairy products are promoted together, such as cereal and milk, ice cream and cookies, etc. To comply with the sales below cost provisions, the value of the coupon and all costs associated with the coupon must not result in the dairy product being sold below cost. The nondairy manufacturer and dairy manufacturer decide how they will divide the costs of the promotion. For example, if the nondairy manufacturer paid for all costs of the promotion, then the promotion would comply because the dairy manufacturer is not involved. If the dairy manufacturer paid a portion of the costs, then this portion would be examined to determine whether this promotion complies with the sales below cost requirements.

Submission Of Promotions

The Dairy Marketing Branch recommends that promotional material be submitted for review prior to its implementation. In this way, staff can determine whether the promotion appears to comply with the law, and if not, adjustments may be made to ensure that the promotion will not be in violation and then recalled or terminated. To eliminate delays in a company's implementation of a promotion, all submitted material will be given priority status to determine compliance with California marketing laws.

Sampling Of Milk Or Dairy Products

Proposed changes to *Regulations Section 1873* would allow a distributor or wholesale customer to offer the sampling of milk and dairy products under the following conditions:

1. Fluid milk products, including buttermilk, eggnog, UHT products, and yogurt may be sampled in amounts not to exceed 8 fluid oz.
2. The samples may be in closed, labeled containers.
3. The samples will be limited to one per customer.
4. The period of time the sampled product is offered shall not exceed one week in the same retail location, until at least 120 days has elapsed.
5. The entity providing the samples must keep records containing the following information: identity of samples distributed, number of samples distributed, period of time samples were distributed, physical location where samples were distributed.

Samples must be offered by distributors, wholesale customers, or a designated representative.

Redemption Devices for Replacement Dairy Products

Pursuant to *Regulations Section 1870.2*, it is permissible for a distributor or wholesale customer to issue a coupon, premium, certificate or similar device to an individual consumer to replace a dairy product if the following conditions are met:

1. The issuance of the redemption device is based on an individual consumer complaint. A complaint must be initiated by the consumer by contacting the distributor or wholesale customer either in writing or verbally.
2. The redemption device may only replace the dairy product on which the complaint was based. The cash value of the redemption device may not exceed twice the amount paid by the consumer for the dairy product being replaced. The value of the redemption device will

be based on the retail amount paid by the consumer multiplied by the number of units on which the complaint was based.

3. Records must be maintained for a period of three years by the distributor or wholesale customer issuing redemption devices. The records should include names of the persons and items to whom redemption devices were issued.

Examples under which redemption devices may be issued include purchasing cartons of fluid milk that leak; product gone sour before its designated code date; or product damaged due to the fault of the distributor or wholesale customer.

Advertising

A manufacturer or distributor may give to wholesale customers an advertising allowance on any dairy product. A key distinction between advertising allowance and promotional allowance is that the advertising allowance may not be used to reduce the sales price of the dairy product. The advertising allowance is strictly to reduce or offset advertising costs.

Advertising allowances are subject to certain provisions as follows:

1. Records must be maintained that identify the manner in which the allowance is offered, the particular period during which the allowance is available, the terms and conditions under which a wholesale customer may qualify for the allowance and the method used to determine the appropriate allowance paid.
2. The advertising allowance shall be offered to all wholesale customers without limitation.
3. The advertising allowance shall not be directly or indirectly conditioned on a wholesale customer's purchase, handling or sales promotion of any other dairy product.
4. To ensure compliance with below cost standards, an advertising allowance shall be considered a direct cost to the dairy product in which the allowance applies.
5. All allowances shall apply only to dairy products sold under a distributor's own registered brand.
6. The costs associated with advertising allowances shall be borne by the issuing distributor.
7. Advertising allowances shall otherwise comply with all other marketing provisions contained in the Code and Regulations.

Solicitation, False Statements

Solicitation, Collusion Or Joint Participation

Code Section 61391 states in pertinent part:

"Solicitation by, or collusion or joint participation between or among, any . . . distributor, wholesale customer, or any representative of any of them, to commit any of the unlawful practices which are prescribed in this article or the use of any misrepresentation, threat. . . or boycott to effectuate the commission of those unlawful practices, makes any person that participates . . . subject to the penalties of this chapter." (*Code Section 61391*)

Investigations have found that many of the unlawful practices described above involved active participation by the affected wholesale customers.

For example, if a wholesale customer seeks a service not offered by its distributor to all similar wholesale customers, that customer has solicited a special service in violation of *Code Section 61391*. If the distributor agrees to provide the special service this customer seeks without offering it to all similar wholesale customers, the customer and the distributor have jointly participated in a violation of *Code Section 61391*. The distributor will have also violated *Code Section 61382*.

False Statements and Misrepresentations

The Code prohibits the wholesale customer, or anyone acting on behalf of the wholesale customer, from making false statements or misrepresentations to any dairy distributor that a competitor of the distributor is selling or offering to sell any dairy product for less than was actually offered, *Code Section 61385*.

Here are some examples of violations:

1. When a wholesale customer tells his supplier that a competing distributor has offered lower net prices for dairy products and no such offer has been made, a false statement has occurred.
2. Also, if the customer informs his supplier a competitor offered an ice cream cabinet rent free when no such offer was made, another false statement has occurred.
3. A chain store customer tells a competitor each store purchases \$300 per delivery per store when only two of the stores purchase \$300 and one store purchases \$150. The competitor then offers the \$300 price for all of the stores, which includes the \$150 store, requiring the present supplier to meet the offer to retain the account. This is an example of misrepresentation.

Costs

Processing and Delivery Costs - An Introduction

The cost of any fluid milk product is derived by determining the processing and delivery costs of that item. Processing and delivery costs are determined by the Dairy Marketing Branch according to the provisions of the Code and Regulations (particularly *Section 1950, Acceptable Cost Accounting Procedures*, and *Section 1951, Unacceptable Cost Accounting Procedures*).

The following sections explore fluid milk plant processing costs and delivery costs.

Fluid Milk Plant Processing Costs

Plant costs are generally divided from General Ledger expenses into two basic categories: Labor and Non-labor expenses. The labor allocation is done through a job analysis, placing each individual employee in the proper job functions within the plant. The general ledger expenses are analyzed using an account analysis method placing each type of cost, "repair and maintenance" for example, in the appropriate cost center. Some expenses may be added or eliminated in both the labor and non-labor category depending on conditions relating to the expenses. The following information is a general outline of cost centers and how costs are derived from each center in a fluid milk processing plant.

1. Raw Product Cost (Ingredients) Includes Plant Loss

The first step in a cost audit is the calculation of the total bulk milk received (raw milk from producers, nonfat milk, cream, condensed nonfat, etc.) by the plant. The "receipts" are then reconciled with the production of finished dairy products "usage." The difference between receipts and usage is the plant loss, which is used in the calculation of certain cost centers, such as raw product cost.

Costs are computed by using the particular plant formula multiplied by component prices established by the Branch. For example, one plant formula may use 1.0% chocolate powder and 7% sugar in chocolate milk. Another plant formula may require .9% chocolate powder and 8% sugar. Also, extra charges and fees may be applied to the raw product cost, such as: milk premiums, milk government assessments, milk hauling charges, and special milk blending fees. A plant loss percentage is then computed on the total raw product price, including all the extra charges and fees.

2. Packaging (Container) Cost - Includes Container Loss

- a) Paper cartons are purchased from paper companies in different types - vending, eco, purepak, 2-color, 1-color, etc. There may be several discounts that can be deducted from the gross purchase price of cartons, e.g. volume, freight, and prompt-pay discounts. Thus, the matter is discussed with the company's purchasing employee.
- b) Colors and color combinations will change the price of a carton. Private labels or special printing on the carton may change the price.
- c) Plastic containers would include the blow mold operation cost, (labor, non-labor, depreciation), resin, label, and cap cost. Some companies purchase empty plastic containers instead of producing them.

d) The container cost is also obtained.

3. General Processing Plant Cost - Includes Labor And Non-Labor

- a) Receiving and tank wash
- b) Separating and standardization (blending)
- c) Pasteurization and homogenization
- d) Case wash
- e) General Plant - engineers, laboratory, and general plant labor and non-labor.

These costs are derived by dividing total dollar cost of each sub cost center, if possible, by gallons received, pasteurized, and processed to arrive at a cost per gallon and converted into various size unit costs.

4. Filling Cost - Includes Labor and Non-Labor

All filling machines that are used in the operation should be included in the cost. Applicable expenses include labor, depreciation of machines, repair and maintenance, etc. These costs are derived by dividing total dollar cost per filler by units and products run through each filler. This will provide a cost per unit for each machine. One of the major aspects involved with filling machines is the units produced per minute of each machine and products involved.

5. Load and Check - Includes Cold Box Operation (Labor And Non-labor)

- a) *Different types of loading*: custom (usually on 40-foot trailers or longer), full service, limited service, flood loading (limited number of products), jobbers, school, etc. Each type of loading method varies the loading time. Customer loading would take longer because each customer order is placed on the 40-foot trailer by product and units in the order the truck is unloaded for the retailer or customer.
- b) *Unloading and loading purchased products* - These costs are computed by dividing total dollar cost by total cases of produced products and a computed adjustment of total cases of purchased products. Because of the significant difference in labor time to handle purchased products, total cases of purchased products are multiplied by a factor of three. One factor is for handling purchased products into the cold box for storage. The two other factors relate to the extra picking time it takes to assemble an order of purchased products, compared to the picking time to assemble an order of produced products. This will provide a cost per case, which is broken down into unit and product cost. If labor in the load and check area can be broken down to specific tasks, such as handling only produced products, handling only purchased products, loading only delivery trucks, only rotating inventory, handling only products on pallets, or handling only certain size products, then the above case factor of three will not be applicable. In this case, separated load and check labor would be divided into the applicable number of specific units that were handled.

6. General and Administrative

General and administrative expenses are those expenses normally thought of as overhead costs, which are in two categories as applied in the plant (labor and non-labor). Labor expenses cover sales people, office personnel (accounts receivable and payable), data processing personnel,

accounting staff, executives, etc. The non labor would be expenses such as insurance, rent and leases, office depreciation, computer depreciation and supplies, telephones, donations, etc. Also included would be corporate headquarters expenses.

These costs are computed by dividing total dollar cost by total equivalent gallons sold if all that is sold by the company is fluid products. Total equivalent cases sold can also be used if the company's product line includes solid food items and non-food items.

SUMMARY OF FLUID PLANT PROCESSING COST

The accumulation of data on all cost centers by product and container size (raw product, packaging, general processing, filling, load and check and general and administrative) will determine the final cost of each item.

For example, the cost for a unit of a gallon of homogenized milk would be as follows:

	Cost Per Center	
	Labor	Non-labor
Raw Product		1.0382
Packaging (Plastic Container)	.0151	.0749
General Processing	.0430	.0870
Filling	.0139	.0200
Load and Check	.0300	
General & Administrative Totals,	<u>.0101</u>	<u>.0299</u>
Labor and Non-Labor	.1121	1.2500
Total Cost Per Gallon	.1121 + 1.2500 = \$1.3621	

7. Delivery Cost

- Relay is a delivery from plant to a non-processing dock, or company satellite location, (40-foot or longer trailers). Relays are normally considered as being delivered to their destination in full trailer loads.
- Limited service or drop shipment using 100% 40-foot trailers, are deliveries to large retail stores or warehouse-type customers. These deliveries are usually limited to a customer's dock.
- Full service delivery using 100% bobtail trucks are usually deliveries to schools, restaurants, and other small accounts. A small number of these accounts may be delivered from 40-foot trailers. When this is done, the stop times or time and motion studies are obtained. Full service delivery as opposed to limited service delivery entails much more handling of the sold products by delivery people. Such handling consists of delivering products into the retail display cases, rotating the inventory products, and accepting returned, out-of-code inventory.

Costing for delivery involves total dollar cost (labor and non-labor) divided by total cases delivered. This would compute a cost per case, which can be broken down by cost per unit and product. If different routes are broken down, a job analysis must be secured on each driver, and truck mileage must be recorded with the appropriate expenses and allocated cases.

Legal Actions & Penalties

Violations of California's milk marketing laws are made punishable by three provisions of the California Food and Agricultural Code.

- ◆ The imposition of civil penalties in an amount not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) for each and every violation. (*Code Section 61572*)
- ◆ The Secretary may seek the issuance of an injunction to prevent the violation or threatened violation of any of the milk marketing laws. (*Code Section 61573*)
- ◆ Misdemeanor punishable by fine or imprisonment (*Code Section 61571*)

APPENDIX

Illustrated Hypothetical Price Schedules

These price schedules have been developed to illustrate common written price lists with terms and conditions used in California's milk and dairy industry. The hypothetical price schedules described in this attachment are used in other portions of this booklet to illustrate some of the examples.

The first hypothetical price schedule is for an imaginary company called HIP Dairies. The HIP Dairies limited service price schedule is an example of a bracket type price schedule, the most prevalent type of price schedule used in the industry today.

The second page of HIP Dairies' limited service price schedule contains its terms and conditions entitled, "Conditions For Limited Service." For a wholesale customer to qualify for the prices contained on this price list, the customer must meet all of the terms and conditions for such limited service. HIP Dairies' Conditions For Limited Service are:

1. A minimum of two deliveries per week;
2. All products must be pre-ordered;
3. Milk and by-products are delivered at the same time;
4. All products are to be delivered to one delivery point;
5. Only leakers and damaged products may be returned for credit; and
6. Extended credit may not exceed 21 days.

The HIP Dairies limited service price list shows the net pricing of various products sold in a single delivery to a single delivery location.

The statement at the bottom of the first page of HIP Dairies' price schedule indicates how to determine the net bracket prices for products sold on each delivery. This procedure calls for the total number of units of all products delivered to be extended at the base price for each product. The total of this extension then indicates the appropriate price bracket to be used in determining the net prices on this invoice.

The first bracket of this price schedule, on the left, is the wholesale base price for each of the products. The second column of prices on HIP Dairies, price schedule reflects the net prices for products purchased where the extended price for all products delivered falls between \$100.00 and \$349.99.

The remaining brackets in this price schedule reflect net prices when the wholesale customer purchases a larger quantity of products at a particular delivery. These brackets are usually referred to by reference to the lowest dollar amount which qualifies the customer for the prices in that bracket, e.g., the "\$350 bracket" for the \$350 to \$599.99 bracket.

The following is an example of how the net prices found on an invoice are established for a HIP Dairies wholesale customer being served from this limited service price schedule:

100 units of one gallon Homo. milk @ base price of \$2.06	=	\$206.00
125 units of half gallon Homo. milk @ base price of \$1.20	=	150.00
36 units of half pint yogurt @ base price of \$.50	=	18.00
12 units of one gallon fruit punch @ base price of \$.92	=	<u>11.04</u>
Total extended base price for all products	=	\$385.04

The total extended base price for purchases on the hypothetical delivery to the wholesale customer amounts to more than \$350.00 and less than \$599.99, thus qualifying this customer for net prices on the invoice for that delivery based upon the \$350 bracket as follows:

100 units of one gallon Homo. milk @ net bracket price of \$1.80	=	\$180.00
125 units of half gallon Homo. milk @ net bracket price of \$1.10	=	137.50
36 units of half pint yogurt @ net bracket price of \$.43	=	15.48
12 units of one gallon fruit punch @ net bracket price of \$.90	=	<u>10.80</u>
Net invoice price	=	\$343.78

The second hypothetical price schedule is for Competitor Dairy. This schedule is also a limited service bracket type price schedule.

The second page of Competitor Dairy's written price schedule contains terms and conditions entitled, "Conditions for Limited Service". Competitor Dairy also has six conditions which must be met in order to qualify for the prices on this price schedule. The first five conditions are the same as those contained in the HIP Dairies price schedule. However, the last condition provides for a shorter period of extended credit, 14 days instead of the 21 days provided by HIP Dairies.

The only significant difference between the two hypothetical price schedules, beside the prices, is noted at the bottom of the first page. Competitor Dairy states, "All products above the double line are to be extended at list (base] price and the total amount establishes the net bracket price." Competitor Dairy does not permit purchases of fruit punch or orange juice to be used in determining the appropriate net bracket prices. The price extension process for determining net prices is the same as that discussed above.

HIP DAIRIES

Effective Date:
July 1, 2001

Limited Service

	(LS-010) Wholesale Base Price	(LS-011)	(LS-012)	(LS-013)	(LS-014)
Product	\$ 0.00 \$99.99	\$100.00 \$349.99	\$350.00 \$500.00	\$600.00 \$949.00	\$950.00 & More
6 Gal. Disp. Homo.	\$12.00	\$11.70	\$11.40	\$11.10	\$10.80
1 Gal. Homo.	\$2.06	\$1.90	\$1.80	\$1.70	\$1.60
1/2 Gal. Homo.	\$1.20	\$1.15	\$1.10	\$1.05	\$1.00
Qt. Homo.	\$.74	\$.70	\$.68	\$.66	\$.64
1/2 Pt. Homo	\$.28	\$.23	\$.20	\$.18	\$.15
1/2 Pt. Cottage Cheese	\$.70	\$.64	\$.61	\$.58	\$.56
1/2 Pt. Yogurt	\$.50	\$.46	\$.43	\$.41	\$.38
1 Gal. Fruit Punch	\$.92	\$.90	\$.90	\$.90	\$.90
Qt. Orange Juice	\$.90	\$.85	\$.82	\$.82	\$.82

All products on this page are to be extended at base price and the total amount establishes the net bracket price.

HIP DAIRIES

Effective Date:
July 1, 2001

Limited Service

Conditions For Limited Service

1. Minimum of Two Deliveries Per Week
2. All Products Must Be Pre-Ordered
3. Milk and By-Products Delivered At Same Time
4. Products Delivered To One Delivery Point
5. Only Leakers and Damaged Products May Be Returned For Credit
6. Extended Credit May Not Exceed 21 Days

COMPETITOR DAIRY

Effective Date:
July 1, 2001

Schedule No. L-1

Limited Service

	L-1)	(L-2)	(L-3)	(L-4)	(L-5)
List Price					
Product	\$ 0.00	\$100.00	\$350.00	\$600.00	\$950.00
	\$99.00	\$349.99	\$500.00	\$949.00	& More
6 Gal. Disp. Homo.	\$11.75	\$11.45	\$11.15	\$11.05	\$10.95
Gal. Homo.	\$ 2.00	\$1.89	\$1.79	\$1.65	\$1.59
1/2 Gal. Homo.	\$ 1.18	\$1.14	\$1.11	\$1.07	\$1.02
Qt. Homo.	\$.72	\$.71	\$.70	\$.68	\$.66
1/2 Pt. Homo.	\$.26	\$.21	\$.18	\$.16	\$.14
1/2 Pt. Cottage Cheese	\$.68	\$.65	\$.62	\$.60	\$.58
1/2 Pt. Yogurt	\$.50	\$.47	\$.44	\$.42	\$.40
<hr/>					
Gal. Fruit Punch	\$.91	\$.89	\$.87	\$.85	\$.85
Qt. Orange Juice	\$.88	\$.84	\$.81	\$.81	\$.81

All products above the double line are to be extended at list price and the total amount establishes the net bracket price.

COMPETITOR DAIRY

Effective Date:
July 1, 2001

Schedule No. L-1

Limited Service

Conditions For Limited Service

1. At Least Two Deliveries Per Week
2. All Products Must Be Pre-Ordered
3. Milk and By-Products Delivered At Same Time
4. Products Delivered to One Point Only
5. Only Damaged Products and Leakers May Be Returned For Credit
6. Extended Credit May Not Exceed 14 Days

PRICE EXCEPTION LETTER

CUSTOMER INFORMATION

ACCT.
NAME: _____
ACCT.
ADDRESS: _____

ACCT.
NO.: _____
DATE FIRST
SERVED: _____

COMPANY INFORMATION

SALES RES NAME: _____

COMPETITIVE INFORMATION

1. COMPANY NAME: _____

2. NAME OF REP.: _____

3. DATE OF OFFER: _____

COMPETITIVE PRICE AND CONDITIONS OFFERED

1. Products Involved: _____

2. Prices Or Price Schedule Offered: _____

3. Conditions: _____

Supporting Documents: 1. Competitor's Price Schedule _____

2. Competitor's Letter Of Offer : 3. Customer's Statement ; 4. Other _____

Company Action Taken: _____ Effective Date: _____

Exception Originated By: _____ ; Title: _____

Date: _____

Exception Approved By: _____ ; Title: _____

Date: _____

Subsequent Review Dates: _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____

By (Initials): _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____ ; _____

Index of Contents

	Page		Page
Advertising	24	Person	4
Brokers	3	Price Discrimination	15
Catering	16	Price Schedule Variations	7
.....		Price Schedules	6
Chain Pricing	19	Price Variations	16
Chain Store	3	Private Schools	12
Classes of Milk	3	Processing Costs	26
Combining Delivery Notices	16	Producer/Handler	4
Confidentiality	2	Promotions	22
Cooperative	3	Public Agency	4
Costs	26	Public Agency Bid Request	12
Dairy Product	3	Public Agency Bid Response	12
Delivery Costs	26	Public Agency Prices	12
Discount Price Schedules	9	Rebates	18
Distributor	3	Records	1
False Statements	25	Redemption Devices	23
Fee Accounts	21	Regulation	4
Firm Prices	16	Retail Coupon	23
Fluid Plant Processing Costs	26	Sales Below Cost	20
Food Service Establishment	3	Sampling of Dairy Products	23
Gifts	21	Secretary	5
Guaranteed, Locked-In Price Bracket	17	Services	8
Handler	3	Slotting Allowance	14
In-Store Overhead	21	Solicitation	25
Joint Participant	4	Stabilization & Marketing Plan	5
Legal Actions/Penalties	29	Submission of Promotions	23
Licensing Requirements	1	Sweepstakes	22
Manufacturer	4	Volume Purchase Provisions	15
Manufacturer Coupons	23	Wholesale Customer Bid Request	13
Manufacturing Milk (Grade B)	4	Wholesale Customer	5
Market Milk (Grade A)	4		
Meeting Competition	10		
Milk	4		
Nondairy Manufacturer Coupons	23		
Notice of Violation	4		

**DEPARTMENT OF FOOD AND AGRICULTURE
SACRAMENTO**

2000

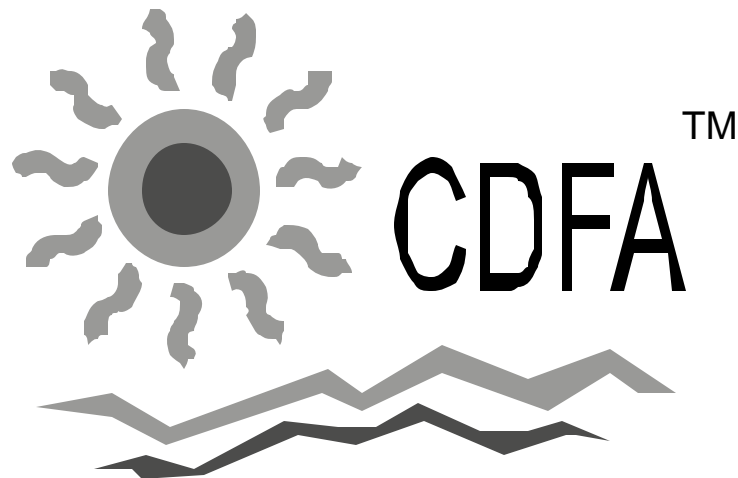
DIVISION 21 EXTRACTS

from the

FOOD AND AGRICULTURAL CODE

Pertaining to

MARKETING OF MILK AND DAIRY PRODUCTS



California Department of Food and Agriculture

**DIVISION OF MARKETING SERVICES
DAIRY MARKETING BRANCH
MILK POOLING BRANCH**

**DEPARTMENT OF FOOD AND AGRICULTURE
SACRAMENTO**

2000

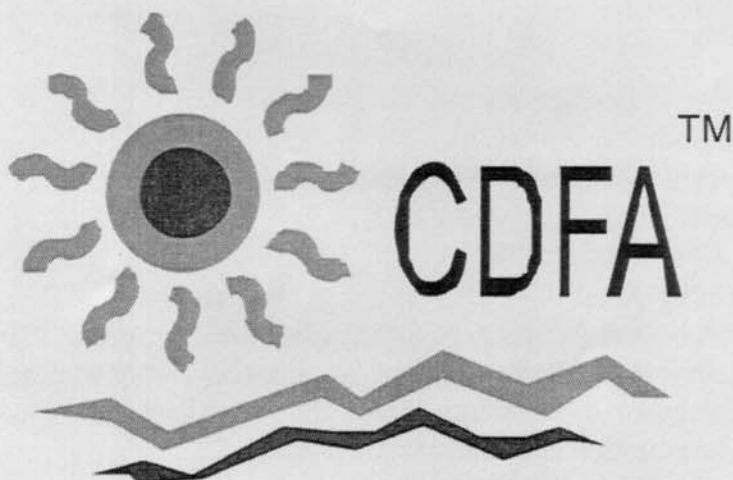
DIVISION 21 EXTRACTS

from the

FOOD AND AGRICULTURAL CODE

Pertaining to

MARKETING OF MILK AND DAIRY PRODUCTS



California Department of Food and Agriculture

**DIVISION OF MARKETING SERVICES
DAIRY MARKETING BRANCH
MILK POOLING BRANCH**

DIVISION 21

MARKETING

Part 3. Marketing Laws Regarding Particular Products

Chapter 1. Marketing of Milk and Other Dairy Products

<u>Article</u>		<u>Section</u>
1.	Definitions	61301
2.	Nonprofit Cooperative Associations	61331
3.	General Provisions	61341
4.	Unlawful Practice	61371
5.	Bonding and Payment for Manufacturing Milk	61400
6.	Records	61441
7.	Investigations and Hearings	61471
8.	Manufacturing Milk Handler Licenses	61490
9.	Disposition and Use of Funds	61531
10.	Actions and Penalties	61571

Chapter 2. Stabilization and Marketing of Market Milk

<u>Article</u>		<u>Section</u>
1.	Legislative Declarations.	61801
2.	Definitions	61821
3.	Nonprofit Cooperative Associations	61871
4.	Administration	61891
5.	Classes of Market Milk	61931
6.	Marketing Areas	61961
7.	Formation and Adoption of Stabilization and Marketing Plans.	61991
8.	Amendment and Termination of Stabilization and Marketing Plans	62031
9.	Establishment of Minimum Prices and Provisions of Stabilization and Marketing Plans	62061
10.	Unlawful Trade Practices	62091
11.	Sales to the United States	62121
12.	Handlers' Licenses	62141
13.	Bonding and Payment for Market Milk	62181
14.	Administrative Fees	62211
15.	Reports and Statistics	62241
17.	Local and Regional Producer Advisory Boards	62301
18.	Actions and Penalties	62401

Chapter 2.5
Milk Producers Security Trust Fund

<u>Article</u>		<u>Section</u>
1.	Legislative Declaration	62500
2.	Definitions	62520
3.	Milk Producers Security Trust Fund Board	62540
4.	Financing Plan	62560
5.	Milk Producers Security Trust Fund Coverage	62580
6.	Discovery and Notification of Default in Payments	62600
7.	Producer Claims	62620
	(No Article 8)	
9.	Trust Fund Coverage of the Pool Equalization Fund	62640
10.	Administration	62660

Chapter 3
Equalization Pools - Section 62700

Chapter 3.5
Milk Pooling - Section 62750

PART 3. MARKETING LAWS REGARDING PARTICULAR PRODUCTS

(Part 3 enacted by Stats. 1967, Ch. 15.)

CHAPTER 1. MARKETING OF MILK AND OTHER DAIRY PRODUCTS

(Chapter 1 enacted by Stats. 1967, Ch. 15.)

Article 1. Definitions

(Article 1 enacted by Stats. 1967, Ch. 15.)

61301. Unless the context otherwise requires, the definitions in this article govern the construction of this chapter.

(Enacted by Stats. 1967, Ch. 15.)

61302. "Bulk milk" or "bulk cream" means milk or cream, respectively, which has not been pasteurized or packaged in bottles, cartons, dispenser cans, or other consumer packages, and which is handled or delivered, in bulk, in tanks, cans, or other bulk containers.

For this purpose, skim milk or cream which has been preheated or pasteurized not more than once, as provided in Section 34004 or 34005 of this code, and is handled or delivered in bulk is not pasteurized.

(Enacted by Stats. 1967, Ch. 15.)

61303. "Consumer" means any person that buys milk, cream, or any dairy product for consumption and not for resale.

(Enacted by Stats. 1967, Ch. 15.)

61304. "Cream" has the meaning of that term as defined in Section 32504.

(Enacted by Stats. 1967, Ch. 15.)

61305. "Dairy product" means any product classified as Class 1 or Class 2 under Section 61932, 61933, or 61936; any frozen product or frozen product mix classified as Class 3 under Section 61934; any product classified as Class 4b under subdivision (b) of Section 61935; butter; pasteurized process cheese; and any filled product or any imitation milk product in which the use of market milk or any component of market milk is required by Section 38925. This definition applies to the designated products whether processed or manufactured in the state or outside of the state and irrespective of the classification of those products at a point of origin outside the state.

(Amended by Stats. 1990, Ch. 58, Sec. 1.)

61306. (a) "Distributor" means any handler, as defined in Section 61826, and includes brokers and agents and the nonprofit cooperative associations described in Article 2 (commencing with Section 61331) of this chapter in the transactions in which such article provides that the associations are distributors. It also includes both of the following:

(1) Any person who regularly operates mobile vehicles on routes predominantly for sales of market milk, market cream, or dairy products on such routes to wholesale customers.

(2) A wholesale customer only as to milk, cream, or any dairy product that is actively and directly processed, manufactured, or packaged by such wholesale customer.

(b) Distributor does not, however, include any of the following:

(1) Any wholesale customer which is not actively and directly engaged in manufacturing, processing, or packaging milk, cream, or any dairy product.

(2) Any producer that delivers milk or cream only to a distributor or manufacturer.

(Amended by Stats. 1982, Ch. 751, Sec. 1.)

61307. "Manufacturing milk" has the meaning of that term as defined in Section 32509.

(Added by renumbering Section 61401 by Stats. 1996, Ch. 759, Sec. 18. Effective January 1, 1997.)

61307.2. "Manufacturing milk handler" means any person who, as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of manufacturing milk in unprocessed or bulk form from a producer, a producer-handler, or another manufacturing milk handler for the purpose of manufacture, processing, sale, or other handling, regardless of whether the manufacturing milk is produced within or outside this state.

(Added by renumbering Section 61402 by Stats. 1996, Ch. 759, Sec. 19. Effective January 1, 1997.)

61307.4. "Manufacturing milk plant" means any place, structure, or building where a handler receives manufacturing milk.

(Added by renumbering Section 61403 by Stats. 1996, Ch. 759, Sec. 20. Effective January 1, 1997.)

61308. "Manufacturer" means any person that is engaged in the business of manufacturing any dairy product.

(Enacted by Stats. 1967, Ch. 15.)

61309. "Market milk" has the meaning of that term as defined in Section 32510.

(Enacted by Stats. 1967, Ch. 15.)

61310. "Market cream" has the meaning of that term as defined in Section 35811.

(Enacted by Stats. 1967, Ch. 15.)

61311. "Milk" has the meaning of that term as defined in Section 32511.

(Enacted by Stats. 1967, Ch. 15.)

61312. "Packaged milk," "packaged cream," or "packaged dairy product" means market milk, market cream, or any dairy product, respectively, which is packaged in cartons, bottles, dispenser cans, or other consumer packages for sale to wholesale customers or consumers.

(Amended by Stats. 1982, Ch. 751, Sec. 2.)

61313. "Person" means any individual, firm, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, nonprofit cooperative association, nonprofit corporation, or any other business unit or organization.

(Amended by Stats. 1994, Ch. 1010, Sec. 129. Effective January 1, 1995.)

61314. "Producer" means any person that operates a dairy herd which produces milk or cream commercially and whose bulk milk or bulk cream is received or handled by any distributor, manufacturer, or any nonprofit cooperative association of producers. It includes the nonprofit cooperative associations described in Article 2 (commencing with Section 61331) of this chapter in the transactions in which such article provides the associations are producers.

(Enacted by Stats. 1967, Ch. 15.)

61315. "Producer-distributor" means any person that is both a producer of milk or cream and a distributor of milk, cream, or any dairy product. For the purpose of this chapter, a "producer-distributor" is a producer in any transaction which involves the delivering of bulk milk or bulk cream produced by him to a distributor, manufacturer, or any nonprofit cooperative association of producers, and is a distributor in any transaction which involves the pasteurization of bulk market milk or bulk market cream, or the packaging of such milk or cream in bottles, cartons, dispenser cans, or other consumer packages, or the sale or delivery of packaged milk, packaged cream, or packaged dairy products.

(Enacted by Stats. 1967, Ch. 15.)

61316. "Restricted use market milk" has the meaning of that term as defined in Section 32516.5.

(Added by Stats. 1996, Ch. 759, Sec. 21. Effective January 1, 1997.)

61317. "Wholesale customer" means any person other than a distributor that buys packaged milk, cream, or any dairy product for resale to consumers or to other wholesale customers.

(Amended by Stats. 1982, Ch. 751, Sec. 4.)

Article 2. Nonprofit Cooperative Associations

(Article 2 enacted by Stats. 1967, Ch. 15.)

61331. For the purposes of this chapter, a nonprofit cooperative association which is organized and existing under Chapter 1 (commencing with Section 54001) of Division 20 of this code, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a producer in any of the following transactions:

(a) Any transaction which involves its receipt or handling of bulk market milk, bulk market cream, or any bulk dairy product which was produced or delivered by such producers.

(b) Any transaction which involves the sale or delivery of bulk market milk, bulk market cream, or any bulk dairy product to any producer, distributor, manufacturer, or other nonprofit cooperative association of producers.

(c) The receipt by it of payment for bulk market milk, bulk market cream, or any bulk dairy product which was produced or delivered by such producers.

(d) Any transaction in connection with accounting to such producers for the proceeds derived from the sale or marketing of market milk, market cream, or any dairy product whether packaged or in bulk.

(Enacted by Stats. 1967, Ch. 15.)

61332. For the purposes of this chapter, a nonprofit cooperative association which is organized and existing under Chapter 1 (commencing with Section 54001) of Division 20 of this code, that acts for producers, including members and any nonmembers of the association, to whom it accounts on a patronage basis, is a distributor in any transaction which involves the receipt by it of market milk, market cream, or any dairy product from any person other than a producer to whom it accounts on a patronage basis and in any transaction which involves the pasteurization of bulk milk or bulk cream, or the packaging of it in bottles, cartons, dispenser cans, or other consumer packages, or the sale or delivery of packaged milk, packaged cream, or any packaged dairy product.

(Enacted by Stats. 1967, Ch. 15.)

61333. A nonprofit cooperative association accounts to producers on a patronage basis when it accounts to each producer for his share of the net proceeds derived from the marketing operations of the association, according to quantity and quality of fluid milk and fluid cream furnished to the association for marketing and according to any marketing pools and quotas established by the association.

(Enacted by Stats. 1967, Ch. 15.)

Article 3. General Provisions

(Article 3 enacted by Stats. 1967, Ch. 15.)

61341. The director may adopt regulations for the proper administration and enforcement of the provisions of this chapter. Any violation of any such regulation is subject to the remedies, procedures, and penalties which are provided in Article 10 (commencing with Section 61571) of this chapter.

(Amended by Stats. 1979, Ch. 1025.)

61342. The provisions of this chapter shall be liberally construed as being complementary of, and supplemental to, the provisions of Chapter 2 (commencing with Section 61801) of this part. If a provision of this chapter and a similar provision of Chapter 2 is applicable to the same person and subject matter the provisions of Chapter 2 shall control. If a provision of this chapter is applicable to any person and subject matter as to which Chapter 2 makes no express provision, the provision of this chapter shall control.

(Enacted by Stats. 1967, Ch. 15.)

61343. Any person and subject matter to which this chapter is applicable is not subject to the provisions of the Unfair Practices Act, Chapter 4 (commencing with Section 17000), Part 2, Division 7 of the Business and Professions Code.

(Amended by Stats. 1976, Ch. 1079.)

61344. This chapter shall be liberally construed. If any article, section, subdivision, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional or invalid as applied to any person or as applied under certain circumstances, that decision shall not affect the validity of the remaining provisions of this chapter or the application of this chapter to any other person or under any other circumstances.

The Legislature hereby declares that it would have enacted each article, section, subdivision, sentence, clause, or phrase of this chapter regardless of the fact that one or more other articles, sections, subdivisions, sentences, clauses, or phrases are declared unconstitutional or invalid.

(Added by Stats. 1987, Ch. 156, Sec. 1. Effective July 10, 1987.)

61345. Chapter 2 (commencing with Section 61801), Chapter 2.5 (commencing with Section 62500), and Chapter 3 (commencing with Section 62700) shall be liberally construed as being complementary of, and supplemental to, this chapter, and these chapters shall constitute a single comprehensive scheme for the regulation of the production and handling of milk. However, each of the chapters, and each article, section, subdivision, sentence, clause, and phrase of each chapter is severable.

If one of the chapters or any article, section, subdivision, sentence, clause, or phrase of any one of the chapters is for any reason held void, invalid, or unconstitutional, the decision shall not affect the validity of any other chapter or any of its articles, sections, subdivisions, sentences, clauses, or phrases.

(Amended by Stats. 1987, Ch. 1074, Sec. 1. Effective September 24, 1987.)

Article 4. Unlawful Practices

(Heading of Article 4 amended by Stats. 1982, Ch. 751, Sec. 5.)

61381. Any false or misleading advertising, as defined in Sections 32914 and 36062 of this code, and Sections 17500, 17501, and 17502 of the Business and Professions Code, of milk, cream, or any dairy product is an unlawful practice.

(Amended by Stats. 1982, Ch. 751, Sec. 10.)

61382. Discrimination in price between distributors or between wholesale customers, or between consumers, that purchase milk, cream, or any dairy product of like grade and quality under like conditions of service if the effect of that discrimination may be substantially to lessen competition or to injure or destroy or prevent competition with the person that either grants or knowingly receives the benefit of the discrimination is an unlawful practice. This section does not, however, prevent differentials which make only due allowance for differences in the cost of the raw product which is used in the milk, cream, or dairy product, or the cost of manufacture, processing, sale, or delivery which results from the different methods or quantities in which the commodities are manufactured, processed, sold, or delivered.

(Amended by Stats. 1982, Ch. 751, Sec. 11.)

61383. The sale or offer to sell or giving of any article in any transaction which involves the sale or disposal of milk, cream, or any dairy product, for less than the cost of the article, as "cost" is defined in Section 61384, to secure or retain the milk, cream, or dairy products business of any wholesale customer or any person that buys as a consumer is an unlawful practice.

(Amended by Stats. 1982, Ch. 751, Sec. 12.)

61384. (a) The sale by any retailer, wholesale customer, manufacturer, or distributor, including any producer-distributor or nonprofit cooperative association acting as a distributor, of milk, cream, or any dairy product at less than cost is an unlawful practice.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Cost," as applied to manufacturers and distributors, means the total consideration paid or exchanged for raw product, plus the total expense incurred for manufacturing, processing, handling, sale, and delivery.

(2) "Cost," as applied to wholesale customers, means the invoice price charged to the wholesale customer, or the expense of replacement, whichever is lower, plus the wholesale customer's cost of doing business.

(3) "Cost of doing business," as applied to wholesale customers, means a wholesale customer's total operating expense divided by the customer's total sales income.

(4) (A) Except as provided in subparagraph (B), "total consideration paid or exchanged for raw product," in the case of market milk or market cream, means the applicable minimum price of the market milk or market cream, if any, payable by distributors to producers pursuant to stabilization or marketing plans in effect pursuant to Chapter 2 (commencing with Section 61801).

(B) Notwithstanding subparagraph (A), in situations involving sales on a bid basis to public agencies or institutions, the definition in subparagraph (A) shall only apply to market milk or market cream that is utilized for class 1 purposes, as those purposes are defined in Chapter 2 (commencing with Section 61801).

(c) Proof of cost, based on audits or surveys conducted in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, and modified, if necessary, to satisfy the requirements of this section, shall establish a rebuttable presumption of that cost at the time of the transaction of any sale. This presumption is a presumption affecting the burden of proof, but it does not apply in a criminal action.

(d) Nothing in this section shall be deemed to prohibit any of the following activities:

(1) The meeting, in good faith, of a lawful competitive price or a lawful competitive condition.

(2) A distributor's action in making conditional sales of equipment or other property, extending credit for merchandise purchased, or paying a customer's obligations not otherwise prohibited by this chapter to another distributor in connection with the transfer of the customer's business from the latter to the former.

(e) The secretary shall establish, by regulation pursuant to Section 61341, the procedures which shall be used to make the determinations required by this section, including the following:

(1) Any modifications to the generally accepted accounting principles described in subdivision (c) necessary to satisfy the requirements of this section.

(2) Procedures for evaluating efforts to meet lawful competitive prices or conditions.

(3) Other procedures necessary or appropriate to facilitate the application or enforcement of this section.

(Amended by Stats. 2000, Ch. 164, Sec. 12. Effective January 1, 2001.)

61385. Any false statement or representation which is knowingly made, by any wholesale customer or consumer, or anyone that is acting on the behalf of either, to any distributor or manufacturer, or any representative of a distributor or manufacturer, that a competitor of the distributor or manufacturer has offered or is offering to sell, or is selling milk, cream, or any dairy product to the wholesale customer or consumer at a lower price than the manufacturer or distributor has offered or is offering to sell, or is selling it is an unlawful practice.

(Amended by Stats. 1982, Ch. 751, Sec. 14.)

61391. Solicitation by, or collusion or joint participation between or among, any manufacturer, distributor, producer, wholesale customer, consumer, or any representative of any of them, to commit any of the unlawful practices which are prescribed in this article, or the use of any misrepresentation, threat, intimidation, or boycott to effectuate the commission of those unlawful practices, makes any person that participates in those unlawful practices subject to the penalties of this chapter.

(Amended by Stats. 1984, Ch. 626, Sec. 1.)

Article 5. Bonding and Payment for Manufacturing Milk

(Article 5 added by Stats. 1981, Ch. 690, Sec. 1.)

61400. It is recognized by the Legislature that unfair and disruptive practices have developed concerning the purchasing of manufacturing milk, as defined in Section 32509, including the failure to pay, or the making of late payments, to producers of manufacturing milk. Such practices tend to disrupt and interfere with the purposes of this chapter by, among other things, creating an unfair advantage to purchasers of manufacturing milk used for manufacturing purposes over purchasers of market milk used for manufacturing purposes. It is necessary, in order to more fully achieve the purposes of this chapter, to provide for the requirement of a payment bond and a schedule for payment concerning purchases of manufacturing milk in certain circumstances.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61404. The bond provided for in this article is required for each manufacturing milk handler.

(Amended by Stats. 1987, Ch. 156, Sec. 3. Effective July 10, 1987.)

61405. (a) Every manufacturing milk handler, which operates only one plant within the state, before purchasing any manufacturing milk from a producer, shall execute and deliver to the director a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The amount of the bond shall be based upon the average daily quantity of manufacturing milk purchased by the handler during any calendar month during a license year. The minimum amount of the bond shall be as follows:

(1) Five thousand dollars (\$5,000) for any handler that purchases an average daily quantity of less than 1,000 gallons.

(2) Ten thousand dollars (\$10,000) for any handler that purchases an average daily quantity of at least 1,000 gallons but less than 4,000 gallons.

(3) Fifteen thousand dollars (\$15,000) for any handler that purchases an average daily quantity of at least 4,000 gallons but less than 8,000 gallons.

(4) Twenty thousand dollars (\$20,000) for any handler that purchases an average daily quantity of 8,000 gallons or more.

(b) Every manufacturing milk handler, which operates more than one plant within the state, before purchasing any manufacturing milk from a producer, shall execute and deliver to the director a surety bond, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. The bond shall be a single bond covering all plants within the state and shall be in an amount determined by multiplying twenty thousand dollars (\$20,000) by the number of plants operated by the handler in the state.

(c) Any milk purchase agreement between a handler and a producer may provide for surety bonds, guarantees, or other forms of security in addition to the bonding requirements in this article.

(Amended by Stats. 1987, Ch. 156, Sec. 4. Effective July 10, 1987.)

61405.1. If any handler increases his or her purchases of manufacturing milk during the license year so that the purchases exceed the amount for which the handler is bonded, the handler shall immediately post an additional bond as may be required to comply with this article.

(Added by Stats. 1987, Ch. 156, Sec. 5. Effective July 10, 1987.)

61406. The bond required by Section 61405 shall be in a form approved by the director, and shall be conditioned upon the payment in the manner that is required by the terms of purchase between the manufacturing milk handler and the producer of all amounts due to producers for manufacturing milk purchased by the licensee or applicant during the license year. The bond shall be to the state in favor of every producer of manufacturing milk.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61407. If a handler fails to pay any producer or producers in the manner that is required by this chapter, the director shall proceed forthwith to ascertain the names and addresses of all the producers that the handler has failed to pay, together with the amounts due and owing to them and each of them by the handler, and shall request all of those producers to file a verified statement of their respective claims with the director. The producer need only verify that he or she is owed an amount by the handler. The actual amount in that case may be ascertained by the director.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61407.1. (a) After determining the claims of the producers pursuant to Section 61407, the director shall bring an action on the bond on behalf of the producers.

(b) Any producer not satisfied with the amount of the producer's claim as determined by the director, or with the ratio the producer's claim bears to all claims against the bond as determined by the director, may intervene in an action commenced upon the bond so that the correct amount of his or her claim and the ratio it bears to all the claims may be adjudicated.

(Added by Stats. 1987, Ch. 156, Sec. 6. Effective July 10, 1987.)

61407.2. If the recovery upon the bond is not sufficient to pay all of the claims as finally determined and adjudged by the court, the amount recovered shall be divided pro rata among the producer-creditors.

(Added by Stats. 1987, Ch. 156, Sec. 7. Effective July 10, 1987.)

61407.3. Payments by a handler to a producer, for the purposes of any action on a handler's bond for any year, shall be credited first to interest and then to principal due, owed, and unpaid. Amounts to be applied to the

principal shall be applied first to the amount owed for the most recent deliveries and then successively, in descending order, to the amounts owed to the next most recent deliveries.

(Added by Stats. 1987, Ch. 156, Sec. 8. Effective July 10, 1987.)

61407.4. (a) The director may bring an action against a surety bond company if the company fails to do any of the following:

- (1) Acknowledge promptly and act reasonably upon receiving a bond demand from the director.
- (2) Promptly investigate and process claims.
- (3) Make fair and equitable settlement of claims.
- (4) Pay the bond amount to the director.

(b) The authority provided in subdivision (a) is in addition to the authority provided for in subdivision (h) of Section 790.03 of the Insurance Code.

(c) In addition to the bond proceeds, the surety bond company may be ordered to pay interest at the prevailing prime rate on the amounts owed from the date the claim was filed, all of the department's court costs, and reasonable attorney's fees.

(Amended by Stats. 1987, Ch. 1074, Sec. 2. Effective September 24, 1987.)

61408. If a manufacturing milk handler fails to pay any producer in the manner that is required by this chapter, the director may require the filing of a new or additional bond in the amount determined by the director to be sufficient to satisfy claims for the payment of producers thereafter supplying manufacturing milk to the manufacturing milk handler. The failure of a manufacturing milk handler to have filed a new bond within 10 days after notice from the director constitutes grounds for the revocation or suspension of the manufacturing milk handler's license of the manufacturing milk handler.

(Amended by Stats. 1987, Ch. 156, Sec. 10. Effective July 10, 1987.)

61409. The failure of any manufacturing milk handler that purchases manufacturing milk from producers to execute and deliver the bond as provided and required in this article is a violation of this chapter. The failure of any handler to post any additional bond as may be required is also a violation of this chapter.

(Amended by Stats. 1987, Ch. 1074, Sec. 3. Effective September 24, 1987.)

61410. The failure of any manufacturing milk handler that purchases manufacturing milk from producers to execute and deliver the bond as provided and required in this article shall constitute grounds for suspension, revocation, or refusal of the manufacturing milk handler's license. The failure of any handler to post any additional bond as may be required to comply with this article shall also be grounds for suspension, revocation, or refusal of the license pursuant to these procedures.

(Amended by Stats. 1985, Ch. 446, Sec. 2.)

61411. Except as otherwise provided in Section 61411.2 or 61411.3, the purchase of any manufacturing milk in excess of 1,000 gallons monthly from any manufacturing milk producer without a written contract that has been executed and complies with all the requirements of this article is an unlawful practice. The contract shall include all of the following:

- (a) The amount of manufacturing milk which is to be purchased for any period.
- (b) The price to be paid for all manufacturing milk received.
- (c) The date and method of payment for the manufacturing milk. Payment shall be made for the amount of the manufacturing milk delivered during the first 15 days of any calendar month not later than the first day of the next following month and for the amount delivered during the remainder of the month not later than the 15th day of the next following month.
- (d) The charges for transportation, if hauled by the handler, which shall be the lower of either of the following:

- (1) A rate not in excess of the rate charged for actual or reasonably similar services by highway carriers, as the term "highway carrier" is defined in Section 3511 of the Public Utilities Code.
- (2) The actual amount paid by a handler for that transportation.

The contract may contain any other provisions that are not in conflict with this chapter. A signed copy of the contract shall be filed by the producer with the director within five days of the date of its execution.

This section does not apply to the purchase of milk which does not meet market milk standards in Chapter 2 (commencing with Section 35751) of Part 2 of Division 15, when the milk has been processed on a dairy farm that held a valid market milk permit during the 30-day period preceding the purchase.

(Amended by Stats. 1991, Ch. 1101, Sec. 1.)

61411.1. The production of manufacturing milk in excess of amounts to be purchased under contracts executed pursuant to Section 61411 shall be voluntary on the part of the producer and shall not be a condition, oral or written, of the execution or renewal of any contract.

(Repealed and added by Stats. 1986, Ch. 227, Sec. 4.)

61411.2. Section 61411 does not apply to the purchase of manufacturing milk which is necessary to meet an unanticipated increase in demand or an unanticipated shortage in the supply of a handler if the quantity purchased from any one producer does not exceed 5,000 gallons in any one month. However, if the producer is a cooperative association acting as a producer, the total quantity purchased shall not exceed 30,000 gallons per month.

For a single transaction between a producer and handler, payment shall be made for the amount of milk delivered during the first 15 days of any calendar month not later than the first day of the next following month and payment shall be made for the amount of milk delivered during the remainder of the month not later than the 15th day of the next following month, unless the milk is subject to a pooling plan as authorized in Chapter 3 (commencing with Section 62700) and the pooling plan provides for different dates and methods of payment, in which case the date and method of payment for the milk shall be as provided for in the pooling plan.

(Amended by Stats. 1991, Ch. 1101, Sec. 2.)

61411.3. Section 61411 does not apply to manufacturing milk purchased under cash-on-delivery terms.

(Added by Stats. 1987, Ch. 156, Sec. 14. Effective July 10, 1987.)

61411.4. Any contract between a producer and a handler shall be voidable by the producer for a 45-day period following the occurrence of either of the following:

(a) The handler has failed to pay the producer the full price specified in the contract or has failed to comply with the terms specified in subdivision (c) of Section 61411, and the failure has not been corrected by the handler within one business day after notification by the producer or director. The 45-day period shall commence on the day after the payment was due.

(b) The handler has failed on three separate occasions within a 12-month period to pay the producer the full price specified in the contract or has failed to comply with the terms specified in subdivision (c) of Section 61411. The 45-day period shall commence on the day after the third occurrence.

(Amended by Stats. 1987, Ch. 1074, Sec. 6. Effective September 24, 1987.)

61411.5. If a notice has been issued by the director that the future deliveries to the handler shall not be covered under the Milk Producers Security Trust Fund created pursuant to Chapter 2.5 (commencing with Section 62500), all contracts between producers and the handler are voidable by the producers. Producers shall have the option to void their contracts for a 45-day period from the date the notice is issued or until the date the director establishes for reinstatement of the handler's eligibility under the trust fund, whichever is later.

(Amended by Stats. 1987, Ch. 1074, Sec. 7. Effective September 24, 1987.)

61412. Every milk handler who receives manufacturing milk subject to the provisions of this article shall deduct as an assessment from payments made to producers for manufacturing milk the sum of one and two-tenths cents (\$0.012) per hundredweight of manufacturing milk.

The amount of the assessments so deducted shall be paid to the director on or before the 45th day following the last day of the month during which the manufacturing milk was received.

Every milk handler who receives manufacturing milk subject to the provisions of this article that purchases or handles manufacturing milk from producers shall pay a fee of six-tenths of one cent (\$0.006) per hundredweight of manufacturing milk.

The amount of the fee shall be paid to the director on or before the 45th day following the last day of the month in which the manufacturing milk was received.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61413. The director may fix the rates of assessments or fees required by Section 61412 at lesser amounts, and may adjust the rates of assessments or fees from time to time, whenever he or she finds that the cost of administering this article can be defrayed from revenues derived from the lower rates, provided that the rate of assessments deducted from payments to producers for manufacturing milk and the rate of fees paid by manufacturing milk handlers shall at all times be in the ratio of two to one.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61414. (a) Any assessment or fee or either of them payable pursuant to any provision of this article is a debt of the person by whom the assessment or fee or either of them is payable and shall be due and payable to the director upon the date set forth in Section 61412. If the person does not pay the assessment or fee or either of them upon the required date, the director may file a complaint against that person in a state court of competent jurisdiction for the collection of the assessment or fee or either of them.

(b) If any such person does not pay to the director the assessments or fees or either of them provided for in this article, on or before the date specified in Section 61412, the director may add to the unpaid assessments or fees or either of them an amount not exceeding 10 percent of the unpaid assessment or fees or either of them to defray the cost of enforcing the collection of the unpaid assessments or fees or either of them.

(Added by Stats. 1981, Ch. 690, Sec. 1.)

61415. The failure of any handler to pay for manufacturing milk delivered to the handler at the time and in the manner specified in the contract with the producer is an unlawful trade practice.

(Added by Stats. 1983, Ch. 857, Sec. 2.)

61415.1. (a) Handlers shall pay producers either by check or cash. Handlers electing to pay producers in cash shall, in all cases, obtain a dated, signed receipt from each producer. These receipts shall be made a part of the permanent records of the handler. Handlers paying by check shall issue checks which are reduceable to cash by the producer in no more than one business day.

(b) The giving of a promissory note is not payment within the meaning of this chapter.

(Amended by Stats. 1987, Ch. 1074, Sec. 8. Effective September 24, 1987.)

61415.2. (a) If a handler does not pay for manufacturing milk delivered to him or her at the time and in the manner specified in the contract, the handler shall pay the producer interest on the unpaid amount from the time the payment was due until paid at the rate of 12 percent per annum. The interest is in addition to any other penalties provided in this chapter.

(b) If there is no contract for the delivery of milk to the handler or the delivery was made as a single transaction between the producer or handler, the handler shall pay the department interest on the unpaid amount from the time the payment was due until paid at the interest rate specified in subdivision (a). The interest is in addition to any other penalties provided in this chapter.

(Amended by Stats. 1991, Ch. 1101, Sec. 3.)

61415.3. If a handler fails to pay for manufacturing milk delivered to him or her at the time and in the manner specified in this chapter, the director may assess a penalty for each payment date that the producers were not fully paid. Any penalty assessed shall be a minimum of one hundred dollars (\$100) for each payment date. If the amount not properly paid is more than forty thousand dollars (\$40,000), the penalty assessed shall be five thousand dollars (\$5,000) or one-fourth of 1 percent of the amount not properly paid, whichever is less.

(Amended by Stats. 1987, Ch. 1074, Sec. 10. Effective September 24, 1987.)

61416. The director may revoke or suspend any license of a handler if the director finds as a result of a noticed hearing that the handler has not paid for any manufacturing milk delivered to him or her at the time and in the manner specified in the contract with the producer.

(Added by Stats. 1983, Ch. 857, Sec. 3.)

61416.1. The director, pursuant to the procedure in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may also refuse to grant or renew any license to a handler if the director is satisfied that the handler has failed to pay for any manufacturing milk delivered to him or her at the time and in the manner specified in the contract with the producer.

(Added by Stats. 1986, Ch. 227, Sec. 5.)

61417. In lieu of revoking or suspending a handler's license under Section 61416, the director may impose any other conditional and probationary orders, pursuant to a noticed hearing, that may be proper for the enforcement of this chapter or to enforce any provision of any regulation adopted by the director pursuant to Section 61341.

(Added by Stats. 1983, Ch. 857, Sec. 4.)

61418. If the respondent does not comply with any conditional or probationary orders, the director may suspend or revoke the license in accordance with the procedure provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1985, Ch. 446, Sec. 3.)

61419. (a) Whenever the director is satisfied, either by investigation or after a hearing, that a handler is unable to pay for any manufacturing milk purchased from any producer, and is further satisfied that to permit the handler to continue to purchase and receive any manufacturing milk from producers would be likely to cause serious and irreparable loss to producer-creditors and other producers, the director may thereupon and forthwith shorten the time for hearing that is provided for in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and thereupon may issue an order to show cause why the license of the handler should not be forthwith suspended or revoked. The time of notice of the hearing shall not, however, be less than five days. At the hearing the handler that is proceeded against shall be ordered to show cause why the license should not be suspended or revoked, or continued under conditions and provisions, if any, that the director may consider just and proper and for the protection of the best interests of the producer-creditors and producers from whom the handler has been and is receiving any manufacturing milk. Following the hearing, the decision of the director shall become effective at the director's discretion.

(b) The hearing, in the case of an emergency, may be called upon written notice which is served personally or by mail on the handler that is involved. If the notice is sent by mail, the hearing date shall be no sooner than 10

days after the notice is sent. It may be held at the nearest office of the director or at any place that may be most convenient in the discretion of the director for the attendance of all of the parties that are involved.

(Added by Stats. 1983, Ch. 857, Sec. 6.)

Article 6. Records

(Article 6 enacted by Stats. 1967, Ch. 15.)

61441. Every distributor, person who sells at wholesale, or manufacturer of milk, cream, or any dairy product shall maintain and keep, for a period of three years from their initial recordation, or for a period of three years from their expiration date, whichever period is longer, all of the following records:

(a) A record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, and deductions or charges made, and the use to which the milk or cream was put.

(b) A record of all milk, cream, or dairy products sold, classified as to kind and grade of milk, cream, or dairy product, showing where the milk, cream, and dairy products were sold, the quantities sold, the amounts received for the sales, and the written price schedules maintained by the distributor, person who sells at wholesale, or manufacturer for all milk, cream, and dairy products sold.

(c) A record of the wastage or loss of milk or any dairy product.

(d) A record of all costs of manufacturing, processing, handling, sale, and delivery, including overhead costs.

(e) A record of all property or financial transactions, other than those for which records are maintained under subdivision (b), between the distributor, person who sells at wholesale, or manufacturer and wholesale customers.

(f) Other records that the director may deem necessary for the proper enforcement of this chapter.

(Amended by Stats. 1987, Ch. 156, Sec. 20. Effective July 10, 1987.)

61442. The director shall have access to, and may enter at all reasonable hours, any place where any dairy product is being processed, bottled, stored, kept, or sold, or where the books, papers, records, or documents pertaining to any transaction which relates to any dairy product is kept. He may inspect and copy such books, papers, records, or documents in any place within the state.

(Added by renumbering Section 61443 by Stats. 1979, Ch. 1025.)

61442.1. Within 60 days of the effective date of this section, each manufacturing milk handler shall provide the director with a list of the name, address, and date of every current contract between the handler and manufacturing milk producers. Monthly thereafter, the handler shall report to the director the same information on all terminated, new, and amended contracts which has not been previously reported. The director may assess a one hundred dollar (\$100) penalty against any manufacturing milk handler who fails to file the required report for each report not filed.

(Added by Stats. 1987, Ch. 156, Sec. 21. Effective July 10, 1987.)

61443. Any record or report which is made to the director pursuant to this article, or any contract required to be filed pursuant to this chapter, is confidential and shall not be divulged, except if necessary for the proper determination of any court proceeding or hearing before the director.

(Amended by Stats. 1987, Ch. 156, Sec. 22. Effective July 10, 1987.)

Article 7. Investigations and Hearings

(Article 7 enacted by Stats. 1967, Ch. 15.)

61471. The director may, upon his or her own motion or upon the receipt of any verified complaint, investigate any transaction that involves the violation of any provision of this chapter by any person. The director may call and conduct a hearing in furtherance of that investigation.

(Amended by Stats. 1993, Ch. 187, Sec. 1. Effective January 1, 1994.)

61472. If a hearing is called by the director, the director shall cause a copy of the complaint, together with a notice of time and place of hearing of the complaint, to be served personally or by mail upon that person. Service shall be made at least 10 days before the hearing.

(Amended by Stats. 1993, Ch. 187, Sec. 2. Effective January 1, 1994.)

61473. The hearing shall be held in the city or place in which is situated the business location of the person that is complained of, or in which the transaction complained of is said to have occurred.

(Enacted by Stats. 1967, Ch. 15.)

61474. The person complained of shall, at least three days prior to the date fixed for the hearing, serve upon the complaining party and file with the director a verified answer to all the allegations which are contained in the complaint.

(Enacted by Stats. 1967, Ch. 15.)

61475. At the time and place which is appointed for such hearing the director shall hear the parties to such complaint, and shall enter in the office of the director at Sacramento a decision dismissing such complaint or specifying the facts which are established on such hearing. A copy of such decision shall be furnished to each of the respective parties to it.

(Enacted by Stats. 1967, Ch. 15.)

61476. The director may do any of the following:

- (a) Administer oaths and take testimony thereunder.
- (b) Issue subpoenas which require the attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles, or instruments.
- (c) Compel the disclosure by such witnesses of all facts which are known to them relative to the matters under investigation.

(Enacted by Stats. 1967, Ch. 15.)

61477. Any party that disobeys any order or subpoena of the director is guilty of contempt and shall be certified to the superior court of the state, in and for the county wherein such contempt occurs, for punishment for such contempt in accordance with Sections 11180 to 11191, inclusive, of the Government Code.

(Enacted by Stats. 1967, Ch. 15.)

61478. Any act of the director pursuant to any provision of this chapter may be reviewed by any court of competent jurisdiction.

(Enacted by Stats. 1967, Ch. 15.)

Article 8. Manufacturing Milk Handler Licenses

(Article 8 added by Stats. 1985, Ch. 446, Sec. 4.)

61490. For the purposes of this article, each subsidiary manufacturing milk plant, or branch manufacturing milk plant, whether under one ownership or not, shall be considered as an individual manufacturing milk handler.

(Added by Stats. 1985, Ch. 446, Sec. 4.)

61491. "Manufacturing milk handler" means any person defined as a manufacturing milk handler pursuant to Section 61402.

(Added by Stats. 1985, Ch. 446, Sec. 4.)

61492. It is unlawful for a manufacturing milk handler who is not licensed under Article 12 (commencing with Section 62141) of Chapter 2 to handle manufacturing milk without first obtaining a manufacturing milk handler's license pursuant to this article. In addition, pursuant to Section 61490, any handler shall obtain a separate license for each milk plant owned or operated. The license provided for in this article is in addition to any license which is required by Division 15 (commencing with Section 32501), or by any law or ordinance of any county or municipality of this state.

(Added by Stats. 1985, Ch. 446, Sec. 4.)

61493. Application for the license provided by this article shall be made on forms prescribed by the director, accompanied by an application fee as prescribed in Section 61494, and state the name and address of the applicant and any details specifically related to the nature of the applicant's business that the director may require. The applicant shall further satisfy the director of his or her character, responsibility, and good faith in seeking to carry on the business stated in the application.

(Amended by Stats. 1987, Ch. 534, Sec. 1.)

61494. One-half of the valid license renewals shall be issued for a period of 24 months beginning January 1, 1988. The application fee for the renewal of the 24-month license shall be twenty-five dollars (\$25).

The remaining valid license renewals shall be issued for a period of 12 months beginning January 1, 1988. The application fee for the renewal of the 12-month license shall be twelve dollars and fifty cents (\$12.50).

Beginning January 1, 1989, all renewals of licenses shall be issued for a 24-month period, and shall be twenty-five dollars (\$25).

Except as otherwise provided, beginning January 1, 1988, every new license issued shall expire on the 31st day of December of the following year.

Application for a new license or a renewal license, together with the appropriate application fee, shall be made prior to the handling of manufacturing milk or the expiration date of the license held. If it is not so made, the applicant shall pay an additional twenty-five dollars (\$25) before the license shall be issued.

(Repealed and added by Stats. 1987, Ch. 534, Sec. 3.)

Article 9. Disposition and Use of Funds

(Article 9 enacted by Stats. 1967, Ch. 15.)

61531. All money received by the director pursuant to this chapter shall be paid monthly into the State Treasury to the credit of the Department of Food and Agriculture Fund. Funds which are so collected may only be used to defray the expenses in connection with the administration of this chapter, Chapter 2 (commencing with Section 61801), and Chapter 2.5 (commencing with Section 62500).

(Repealed and added by Stats. 1987, Ch. 1074, Sec. 12. Effective September 24, 1987.)

Article 10. Actions and Penalties

(Article 10 enacted by Stats. 1967, Ch. 15.)

61571. The violation of any provisions of this chapter is a misdemeanor which is punishable by a fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment. The amount of penalty which is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of such violation upon effectuation of the purposes and provisions of this chapter.

(Amended by Stats. 1983, Ch. 1092, Sec. 127. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

61572. Any person who violates this chapter, or any regulations adopted under this chapter, is liable civilly in an amount not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) for each and every violation, that sum to be recovered by the director in any court of competent jurisdiction. The amount of penalty which is assessed pursuant to this section on each count of violation shall be based upon the nature of the violation and the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter. The court may, in addition to the civil penalty, award reasonably incurred investigative and enforcement costs, and attorney's fees, to the director. The court may also award attorney's fees to any person successfully defending a civil action under this section. In any civil action initiated by the director under this section, the director shall join in the action, and assert civil penalties against, all parties participating in the commission of the unlawful practice. Any sum which is recovered under this section shall be deposited in the State Treasury to the credit of the Department of Food and Agriculture Fund.

(Amended by Stats. 1989, Ch. 522, Sec. 1.)

61573. The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order which is made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. There may be enjoined in one proceeding any number of defendants alleged to be violating the same provisions or orders, although their properties, interests, residences, or places of business may be in several counties and the violations separate and distinct. Any proceeding which is brought pursuant to this section shall be governed in all other respects by the provisions of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure.

(Enacted by Stats. 1967, Ch. 15.)